

**ATTACHMENT 2
AOC STANDARD TERMS AND CONDITIONS
REVISION NO. 1**

**EXHIBIT A
WORK TO BE PERFORMED**

1.0 Summary of Work

The Judicial Council of California, as part of its charge to administer justice in the State of California, oversees and administers the State's Certified Court Interpreter and Registered Court Interpreter programs through the Administrative Office of the Courts to provide for equal justice to all California citizens and residents and to provide for their special needs in their relations with the judicial branch. These programs are intended to establish and apply standards for providing and maintaining competent spoken-language interpretation of court proceedings. Accordingly, the State has retained the Contractor to provide services hereunder in support of the testing requirement for certifying interpreters for the programs. The Contractor shall provide the Work as set forth below in connection with administering, maintaining, and training/norming raters for standardized language interpretation examinations for applicants to the California Court Interpreters program.

2.0 Exam Administration Services

The Contractor shall perform the following on-going activities associated with the administration of the Certified Court Interpreter and Registered Court Interpreter Examinations, and the administration of bilingual oral proficiency exams. Examination administration will also include the Judicial Council approved policy to require court interpreter candidates to pay the full and actual cost of Oral and Written Examinations, based on current competitive market rates.

2.1 Public Access to Exam Information. The Contractor shall perform the following tasks in relation to providing public access to Exam information:

2.1.1 Design and maintain a web site for the Certified Court Interpreter and Registered Court Interpreter Examinations program and include information on the administration of bilingual oral proficiency exams. The design of the web site will include 1) maximization of page ranking, 2) instructions for submitting registration forms via mail or over-the phone for all Examinations, 3) detailed information regarding payment options, including the use of credit cards (Visa[®] or MasterCard[®]), and 4) web-based access to Exam information, including but not limited to:

- 2.1.1.1 Examination dates and locations;
- 2.1.1.2 Exam preparatory materials;
- 2.1.1.3 Information on the certification/registration process;
- 2.1.1.4 Registration applications, instructions, and payment policies;

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- 2.1.1.5 Examination cancellation, refund, and rescheduling procedures and policies;
 - 2.1.1.6 Description of minimum qualifications for Rater Panel members and description of ongoing quality control of rating process;
 - 2.1.1.7 Appeals process;
 - 2.1.1.8 Explanation of the scoring procedures;
 - 2.1.1.9 Explanation of ADA provisions; and
 - 2.1.1.10 Explanation of confidentiality policy.
- 2.1.2 Design, develop, and publish candidate materials to include Exam information, in accordance with the specifications of the AOC Project Manager. The Contractor will make such materials available for download on the webpage. Upon request, the Contractor will provide a hardcopy by mail to candidates at no additional cost.
- 2.1.3 Staff and maintain a call center and centralized e-mail response center with Pacific Time zone operation hours of 9:00 a.m. to 6:00 p.m. to process Examination registrations and answer questions regarding the Exam administration process. The Contractor will provide relevant materials to call center and e-mail response center staff and ensure trained staff is available to answer candidate questions in a timely and professional manner.
- 2.2 Data Collection, Analysis, and Reporting. The Contractor shall perform the following tasks in relation to data collection, analysis, and reporting:
- 2.2.1 Capture and report on a quarterly basis candidate statistical data including, but not limited to:
 - 2.2.1.1 Pre-exam demographic data for candidates:
 - 2.2.1.1.1 Name (with prefix option);
 - 2.2.1.1.2 Date;
 - 2.2.1.1.3 Address of home residence;
 - 2.2.1.1.4 Target Language;
 - 2.2.1.1.5 Date of birth;
 - 2.2.1.1.6 Native language;
 - 2.2.1.1.7 Highest level of education;
 - 2.2.1.1.8 Additional training;
 - 2.2.1.1.9 Number of times candidate has taken the Exam; and
 - 2.2.1.1.10 How the candidate learned about the certification/registration Exam.
 - 2.2.1.2 Aggregated, post-exam data for all candidates:

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- 2.2.1.2.1 Overall passage/fail rates;
 - 2.2.1.2.2 Pass/fail rates by Exam site;
 - 2.2.1.2.3 Pass/fail rates in correlation with demographic data; and
 - 2.2.1.2.4 Inter-Rater reliability statistics.
- 2.2.1.3 Data per candidate:
- 2.2.1.3.1 Pass/fail status;
 - 2.2.1.3.2 Exam version administered;
 - 2.2.1.3.3 Raw and weighted scores for the Written Exam;
 - 2.2.1.3.4 Scoring unit analysis for the Oral Exams;
 - 2.2.1.3.5 Item analysis detailing performance on each question for the Written Exam;
 - 2.2.1.3.6 Item analysis detailing performance on each section of the Oral Exam; and
 - 2.2.1.3.7 Identification of the Rater(s) per Oral Exam.
- 2.2.2 Submit to the AOC Project Manager a list of all passing/failing candidates, including names, addresses, telephone numbers, and similar identifying information. For the Written Exam and the bilingual oral proficiency exams, this list must be provided to the AOC Project Manager on a quarterly basis. For the Oral Exam, this list must be provided to the AOC Project Manager prior to the release of candidate Exam results. Such list shall include the number of candidates scheduled for that Exam Cycle, the number of candidates actually tested, and the aggregate number of passing/failing candidates, in addition to such other information as the AOC Project Manager may reasonably request within the scope of the Agreement. Changes out of scope will be subject to the conditions set forth in Exhibit C, General Provisions, section 25, Changes and Amendments.
- 2.2.3 The Contractor shall prepare and submit to the AOC Project Manager progress reports in writing within ten (10) business days of mailing the Oral Exam score reports to candidates. Each progress report is to provide the Contractor and AOC Project Manager with an evaluation of progress on the Work to be Performed for the Administration of Written and Oral Exams.
- 2.2.3.1 Each progress report shall include, but not be limited to, the following sections:
 - 2.2.3.1.1 Narrative summary: This section shall be a thorough statement of the Work activities and progress during the previous quarter. At the minimum this section shall include:

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- 2.2.3.1.1.1 A discussion of any problems encountered and any proposed changes to the Work necessitated by these problems;
 - 2.2.3.1.1.2 An evaluation of Rater performance on the Oral Examinations by language, including a discussion of inter-rater reliability scores as specified in section 2.5.7 of this Exhibit; and,
 - 2.2.3.1.1.3 A discussion of any actions taken to ensure Rater quality and consistency as specified in section 2.5.7 of this Exhibit.
 - 2.2.3.1.1.4 A description of all appeals received during the previous quarter, including details regarding the actions taken to resolve the appeals.
 - 2.2.3.1.2 Fee Collection: The Contractor will submit an invoice for Registered Court Interpreter Oral Exams detailing the number of Exams administered, fees collected directly from candidates for Registered Court Interpreter Oral Exams, and any fees due the Contractor as set forth in Exhibit B, Payment Provisions;
 - 2.2.3.1.3 Schedule status: This section shall state whether the Project is progressing according to the schedule. If delays have been experienced, the section shall include a discussion of how the Work will be brought back on schedule or any necessary revision to the schedule;
 - 2.2.3.1.4 Activities planned for next period: This section shall include a discussion of the accomplishments anticipated in the next period. When appropriate, this section shall include a discussion of difficulties expected in the next period and methods proposed for dealing with these difficulties;
- 2.2.4 The Contractor shall provide administrative support to the AOC for all candidate appeals. Contractor will develop and implement an appeals process, before administering any Examinations, to address candidate complaints concerning the Exam administration process.
- 2.2.4.1 Upon receipt of an appeal regarding Exam content or cut-score/passing criteria, the Contractor will forward the appeal to the AOC. The AOC will direct Contractor on how to respond to the appeal and the Contractor will prepare a response to the candidate on behalf of the AOC.
 - 2.2.4.2 For appeals regarding Exam administration, scoring services and other services performed by the Contractor, the Contractor shall

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- prepare an appropriate response and directly respond to the candidate. Contractor will consult with the AOC as necessary.
- 2.2.4.3 As detailed in section 2.2.3 of this Exhibit, the Contractor shall provide the AOC Project Manager with a progress report, including details on any and all appeals. The report shall include a review of the details of the appeal, a copy of the appeal letter, and a discussion of the actions taken to resolve the appeals.
- 2.2.4.4 For all appeals associated with Exam administration, scoring services and other services performed by the Contractor, the Contractor will bear the costs to resolve the appeal with the candidate.
- 2.2.5 The Contractor agrees to track and report to the AOC the pass/fail status of candidates taking the Written and Oral Certified and Registered Court Interpreter Examinations. The Contractor will track candidates' eligibility to take subsequent Written and Oral Examinations based upon the Retake Policy for each. All candidates must pass the Written Exam in order to sit for the Oral Court Interpreter Exam. The Written Exam Retake Policy permits a candidate to take a written exam two times per 365 days. However, the candidate must wait a minimum of 90 days before written exam testing opportunities. The Oral Exam Retake Policy permits a candidate to take an oral exam (one per language per testing event) in a particular language a total of four times. If the candidate does not pass the oral exam within four attempts, the candidate must retake and pass the written exam.
- 2.2.6 The Contractor agrees to track and to make appropriate scheduling accommodations for candidates who require an Examination retake due to misadministration or other manifest error caused by the Contractor. If the retest opportunity is provided because the Contractor is at fault, the Contractor also agrees to permit the candidate to retest without the retesting opportunity counting against the candidate's total of four attempts, in accordance with the Retake Policy. The Contractor will track all accommodations and modifications to the Retake Policy and report this information to the AOC immediately following the scheduling of the retest.
- 2.2.7 Contractor shall provide a written report on written exams and bilingual oral proficiency exams on a quarterly basis, as well as oral reports on the volume of Written Exam test-takers at bi-weekly scheduled conference calls with the AOC Project Manager. Oral reports will include, but not be limited to: analysis of volume by language and test site, and projections regarding future test volume; and
- 2.2.8 Each 12 month period, Contractor agrees to provide one written Annual Summary of Examination Activities summarizing the following for the contract period: total number of Written and Oral Exams administered, total

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number of bilingual oral proficiency exams administered, total number of passing candidates for Written and Oral Exams, total number of passing candidates for bilingual oral proficiency exams, total number of appeals, revision or rotation of Exam Items or Exam Materials, and results of inter-rater reliability studies.

2.3 **Exam Administration Activities for both Written and Oral Court Interpreter Examinations and Bilingual Oral Proficiency Exams**

- 2.3.1 Establish an Examination schedule that both parties may publish as appropriate but which may be modified, with the approval of the AOC Project Manager, based upon a change in circumstances, such as unavailability or inadequacy of Examination sites;
- 2.3.2 Ensure that the Exam site facilities include appropriate sound-proof rooms needed for high-stakes Oral Exam administration and that test sites can accommodate all necessary technological equipment needed for the administration of the Exams;
- 2.3.3 Ensure that the Exam Cycle schedules accommodate State holidays and those candidates observing the Sabbath on Saturdays and ensure that Exam site facilities are accessible to applicants with disabilities in compliance with the ADA;
- 2.3.4 Ensure that necessary accommodations are made in cases of excessive noise or disruptive activity, including, but not limited to ongoing construction, labor disputes, or special occasions or events.
- 2.3.5 Ensure that there is no discrimination of candidates as to age, sex, race, religion, national origin, physical or mental disability, sexual orientation, or marital status, and include statements on nondiscrimination in every announcement of the Examination program;
- 2.3.6 Administer agreed upon Exam Cycles of Certified Court Interpreter and Registered Court Interpreter Examinations including locating, renting, and preparing the Examination site facilities, arranging, scheduling, and monitoring proctors and other staff, as well as rating the exams and shipping and receiving Exam Materials, and other related tasks;
- 2.3.7 Prepare, review, print, and disseminate Exam Materials, applications, schedules, Examination results and related Materials for all candidates of the Written and Oral Certified and Registered Court Interpreter Examination;

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- 2.3.8 Accept and process applications and Application Fees, using the then-current fee schedule approved by the State, for bilingual oral proficiency exams, written exams, Certified Court Interpreter and Registered Court Interpreter Examinations and any other fees involved. Fees will be based on competitive market rates and will be set for the first year of the Agreement and then adjusted as set forth in Exhibit B, Payment Provisions, Section 1, Application Fees.
- 2.3.9 Collect and account to the AOC Project Manager for all fees assessed to Registered Court Interpreter Oral Exam candidates. Such fees shall be collected and retained by the Contractor to be applied to the amounts billable for contract Deliverables;
- 2.3.10 Select, train, schedule, evaluate, and otherwise manage all Examination Proctors, all other Staff Employees, and Contract Staff who meet the minimum qualifications for Examinations and Examination scoring as defined in sections 2.5.2, 2.5.3, and 2.5.4 of this Exhibit;
- 2.3.11 Administer both Certified Court Interpreter and Registered Court Interpreter Examinations as previously developed for the State of California Certified Court Interpreter and Registered Court Interpreter Certification Program in Exam Cycles;
- 2.3.12 Administer valid, defensible computer-based or telephonic bilingual oral proficiency screening exams in English and in as many foreign languages as available at least twice per year, but preferably on a continuous basis with on-demand scheduling. (A list of the languages most frequently spoken in California can be found in the *2010 Language Need and Interpreter Use Study: www.courts.ca.gov/documents/language-interpreterneed-10.pdf*). The service provider may subcontract for the use of already established bilingual oral proficiency exams or for the performance of defined administrative tasks.
- 2.3.13 Maintain security procedures to assure the integrity and confidentiality of the examination program and its security from unauthorized access. The security plan should also include a contingency plan for documenting steps to be taken in the event that Exam security is compromised;
- 2.3.14 Consult with the AOC should a passing standard need to be determined. (Final determination of the passing standard for the Examinations remains the responsibility of the AOC.) Options for determining a passing standard include:
- 2.3.14.1 Continuing the existing process; or

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- 2.3.14.2 Conducting individual standard-setting sessions for each unique Examination. (If it is agreed that the passing standard is determined by this latter option, pricing will be mutually agreed upon by the AOC and the Contractor.)
- 2.3.15 Develop and mail a score report, according to the time frames specified in sections 2.4.6 and 2.5.13 of this Exhibit, to each candidate containing customized information, including but not limited to:
- 2.3.15.1 The percentage of scoring units answered correctly in each section;
 - 2.3.15.2 The percentage required to pass in each section; and
 - 2.3.15.3 The overall pass/fail status.
- 2.3.16 Provide evidence to AOC within 15 days of sending scores that candidates have received exam scores.
- 2.3.17 In the event of an unforeseen delay in sending out scores, provide written notice to candidates who do not receive exam scores by specified time. If a delay in exam scores exceeds 45 days from the specified time, the vendor will be responsible for offering a free retake or reimbursement to the test candidate for the exam.
- 2.3.18 Rotate provided Exam Materials as appropriate;
- 2.3.19 Ensure that representatives of the AOC Project Manager adhere to monitoring/observing policies. (The AOC Project Manager may send a representative, with advance notice to the Contractor, to be present at randomly selected Examination sessions or to listen to tapes of the Oral Examination.);
- 2.3.20 Advise the AOC Project Manager prior to the administration of Exams of any substantive change in Examination administration procedures, techniques, or the scope or objectives of the Examinations; and
- 2.3.21 Provide information, Exam Materials, and transitional assistance regarding the administration and scoring of Written and Oral Exams to the AOC at the request of the AOC.
- 2.4 Exam Administration Activities for Written Examinations
- 2.4.1 Prepare Written Examinations as previously developed for the State for computer-based administration. Preparation of the Written Exams for computer-based administration may include, but is not limited to: SME review

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of Written Exam content, correction of typographical errors, and final analysis of electronic format;

2.4.2 Administer the English-only Written Examinations as previously developed for the State according to an agreed upon schedule. This schedule shall include:

2.4.2.1 Continuous computer-based administration at predetermined test sites throughout the State of English-only Written Examinations;

2.4.2.2 The predetermined locations for the administration of English-only Written Exams should include but not be limited to the following areas: Contra Costa County/Bay Area, Sacramento area, San Diego, and Los Angeles area; and

2.4.2.3 Contractor should schedule Written Exams to adhere with best practices. Scheduling protocols will allow candidates to take the Written Exam in a particular language a total of two times per the candidate's individual year (365 days). Scheduling practices will also require candidates to wait for a period of ninety (90) calendar days between Written Examinations in a particular language. Contractor will also ensure that Written Exam Material is rotated so that candidates get a different version of the Exam at each sitting.

2.4.3 Distribute all necessary Examination Materials on Exam dates;

2.4.4 Score the Written Exam battery and report the results to both the candidates and the AOC Project Manager within the time spans outlined in sections 2.4.5 and 2.4.6 of this Exhibit;

2.4.5 Prepare and provide computerized scoring of Written Examinations to AOC Project Manager, including analysis and diagnostic reports for subtest scores on Written Examinations on a quarterly basis;

2.4.6 Provide immediate score reports to candidates at the test location of the Written Examination;

2.4.7 Perform daily quality assurance checks and validation on all Written Exam score reports, and notify the AOC Project Manager immediately if a discrepancy in reporting is found; and

2.4.8 Monitor and report to the AOC Project Manager on Written Exam test-taker volume by language and Exam site during bi-weekly oral reports.

2.5 Exam Administration Activities for Oral Examinations

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- 2.5.1 Administer the California Certified Court Interpreter Oral Examinations as previously developed for the State in Exam cycles, including:
 - 2.5.1.1 Administer the Oral Examinations in all languages as determined by the State;
 - 2.5.1.2 Administer the California Registered Court Interpreter Oral Examinations as previously developed for and currently used by the State; and
 - 2.5.1.3 Administer the California Certified and Registered Court Interpreter Oral Examinations in predetermined locations, including but not limited to the following areas: Contra Costa County/Bay Area, Sacramento area, San Diego, and Los Angeles area.

- 2.5.2 Identify and secure the services of a sufficient cadre of professional Proctors to properly administer the Oral Exams. The Contractor shall establish methods by which Proctors will be identified, recruited, screened, and evaluated, ensuring that Proctors are able to communicate effectively in the English language. Contractor should also ensure that all Proctors have been thoroughly trained in the administration of the Oral Exams in compliance with the National Center for State Courts' Consortium for Language Access ("Consortium") test administration standards; and

- 2.5.3 Train all Proctors to properly administer the Oral Exams, including at a minimum:
 - 2.5.3.1 Training for ensuring Examination security, for handling equipment problems, for responding to emergencies, for crisis management, and the like;
 - 2.5.3.2 Training that also includes a review of all Examination Materials, a review of Examination procedures, and a mock session administering the Oral Exams; and
 - 2.5.3.3 Training that also includes observation and correction of Proctor administration for the first day of a select administration.

- 2.5.4 Identify and secure the services of a sufficient cadre of professional academics and/or interpreter Raters to properly evaluate the results of the Oral Exams. The Contractor shall ensure that a minimum of at least five (5) qualified Raters from both inside and outside of California are contracted for each certified language. The Contractor shall adhere to Consortium methods by which Raters will be identified, recruited, screened, and evaluated both during and following the training process, including at a minimum:
 - 2.5.4.1 Ensuring that all Raters selected meet the State's minimum qualifications, which include achievement of a post graduate degree

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- with a focus in an applicable area of study and/or ten (10) years of interpreting and/or language-related experience and reputation in the field;
- 2.5.4.2 Ensuring that Rater Panels for all Oral Examinations are:
- 2.5.4.2.1 Administratively independent of the Contractor in their evaluation of individual candidates;
 - 2.5.4.2.2 Free of any conflicts of interest or influence from any external source on decisions affecting Examination results;
 - 2.5.4.2.3 Not involved in interpreter training with a vested financial interest in the outcome of the applicants' performance;
 - 2.5.4.2.4 Precluded from taking the current battery of certification and/or registration Examinations in the language(s) contracted to rate during the term of contract and for a period of two (2) years following the expiration of this contract; and
 - 2.5.4.2.5 Approved by the Consortium to rate all Exam material.
- 2.5.4.3 Accepting and processing applications for each new Rater position offered. Conduct thorough reference checks to verify credentials, assess basic skills, and conduct interviews for each new Rater;
- 2.5.4.4 Maintaining documentation of qualifications for each new Rater, including, but not limited to: resumes, references, and a signed Rater code of ethics and a non-disclosure agreement for each new Rater; and
- 2.5.4.5 Informing the AOC Project Manager of the number and characteristics of the Raters who will serve on each Rater Panel, specifying criteria such as native language and professional domicile for the purpose of achieving balance and objectivity.
- 2.5.5 Raters previously approved to score the California Court Interpreter Oral Examinations will be subject to the methods established by the Consortium in selecting and training Raters.
- 2.5.6 Provide initial rater training, as well as periodic, timely refresher training sessions. Rater training sessions for new raters should be in-person and should be able to accommodate 10-15 Raters per training. Refresher training(s) may be conducted via webinar or a remote learning platform provided by the Consortium. Raters should be trained to properly administer and evaluate the results of the Oral Exams including at a minimum:
- 2.5.6.1 Training for ensuring Examination security, for handling equipment problems, for responding to emergencies, for crisis management, and the like;

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- 2.5.6.2 Training that also includes a review of all examination Materials, a review of Examination procedures, including consensus rating, sensitivity training, how to avoid rating biases and errors, considerations in language variances and opportunities to practice rating;
- 2.5.6.3 Training with goals which include ensuring Raters gain an enhanced understanding of the following:
 - 2.5.6.3.1 Candidate behaviors that constitute a particular scale point for unit-based scoring;
 - 2.5.6.3.2 Patterns of candidate errors that reflect a non-passing Rating;
 - 2.5.6.3.3 Patterns of candidate performance that demonstrate competence to achieve a passing Rating; and
 - 2.5.6.3.4 Standards for reporting candidate performance.

- 2.5.7 Develop a policy, with the input and approval of the AOC Project Manager, to ensure quality control of the Rating process and Rater performance to verify Raters' continued accuracy and reliability. The quality control policy shall include at a minimum:
 - 2.5.7.1 Conducting Rater norming sessions prior to the actual rating of candidates;
 - 2.5.7.2 Ensuring that all ratings by consensus are reviewed prior to sending a final result;
 - 2.5.7.3 Ensuring that all new Raters are purposefully assigned (when possible) to rate Exams with seasoned Consortium raters;
 - 2.5.7.4 Compiling, evaluating, and reporting on inter-Rater reliability statistics to assess Rater consistency;
 - 2.5.7.5 Maintaining Rater profiles to track individual Rater performance;
 - 2.5.7.6 Conducting conference calls with Raters to maintain Rater standardization and to discuss administrative issues; and
 - 2.5.7.7 Purposefully assigning, when possible, Oral Examination recordings to Raters from both inside and outside California to avoid bias or the perception of rating bias;

- 2.5.8 Make an audio recording of each Oral Examination prior to shipping Oral Examinations to the Rater Panels for Rating and preserve it for appeal or review purposes for three years from the Examination date, after which point all recordings shall be destroyed;

- 2.5.9 Ensure that each member of the Rater Panel uses a standardized Rating rubric during each oral part of the Examination to document Examination results, and

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preserve rubrics for appeal or review purposes for three years from the Examination date, after which point all recordings shall be destroyed;

- 2.5.10 Ensure that at least two (2) Raters evaluate each Oral Examination individually, as well as provide a consensus rating. In the event of a discrepancy, a consensus score shall be decided by using an independent, third-party Rater and following a quality- assurance check on the three independent ratings;
- 2.5.11 Ensure that Rater Supervisors are used with teams consisting of two (2) new raters. All Rater Supervisors should be secured in accordance with Consortium guidelines. (For more information: http://www.ncsconline.org/D_Research/Ratermanual.pdf).
- 2.5.12 Prepare and/or provide Rating of Oral Examinations; provide to each candidate a score report; and provide to each failing candidate a copy of the existing documentation giving Rating definitions and sample errors in language assessment categories; and
- 2.5.13 Mail score reports to candidates within sixty (60) Days of the last day of the Exam Cycle.
- 2.5.14 Implement Oral Examination Rating process using electronic transmission of documents and scores.
- 2.5.15 Utilize electronic process in accordance with Consortium's Technical Committee. Electronic process should include means by which raters receive exam materials via secure transmission process and raters return candidate score reports via secure transmission process.

2.6 Exam Administration Activities for Bilingual Oral Proficiency Exams

- 2.6.1 The service provider will be asked to perform the following tasks in relation to test administration activities for both the English and foreign language bilingual oral proficiency screening exams:
 - 2.6.1.1 Administer valid, defensible computer-based or telephonic bilingual oral proficiency screening exams in English and in as many languages as possible. Bilingual oral proficiency screening exams should be administered at least twice per calendar year, but preferably on demand. Bilingual oral proficiency screening exams in all available languages must measure oral proficiency skills and assess an individual's ability to comprehend and communicate according to the Interagency

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Language Roundtable Skill Level Descriptions¹ (**or an equivalent system or rubric**). The service provider may subcontract for the use of already established bilingual proficiency exams or for the performance of certain administrative tasks.

2.6.1.2 In order to realize cost-savings for candidates and create efficiencies, the service provider should attempt to create incentives for candidates to take both the bilingual oral proficiency screening exams and written examinations in one sitting.

2.6.1.3 Develop and implement an appeals process to address and track examinee complaints concerning the administration of the bilingual oral proficiency screening exams. Grounds for an appeal include evidence of bias, fraud, discrimination, significant irregularity in the exam administration, or inappropriate application of ADA or other accommodations. Appeals based on exam content will not be considered.

2.6.2 The service provider will be asked to perform the following tasks in relation to rating the bilingual oral proficiency screening exams:

2.6.2.1 Secure the services of qualified language professionals or an organization as subcontractors to rate and record the results of the bilingual oral proficiency screening exams. The service provider will secure the services of raters both inside and outside of California, when possible;

2.6.2.2 Establish and publicize methods by which raters are identified, recruited, screened, and evaluated;

2.6.2.3 Raters should have adequate training to accurately score exams. In addition, raters should attend training sessions provided by the service provider or subcontractor. Training should cover rating and scoring processes, use of the scoring rubric, reporting methods, and review of the AOC established Rater Code of Ethics. Ensure that raters use the scoring processes and scoring rubric as taught during training sessions;

2.6.2.4 Ensure that each bilingual proficiency screening exams is rated by qualified language professional(s) or an organization and an established method is employed to resolve rater conflicts, discrepancies in ratings, and/or appeals based on ratings; and

¹ <http://www.govtilr.org/>

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2.6.2.5 Ensure that subcontracted Raters for bilingual proficiency screening exams 1) are administratively independent of the Contractor in their evaluation of individual applicants, 2) are free of any conflicts of interest or influence from any external source on decisions affecting Examination results, and 3) that no Rater shall have a vested financial interest in the outcome of the applicant's performance.

2.7 Development of Court Interpreter Video Material

- 2.7.1 The service provider or subcontractor may be asked to develop a minimum of one short video related to the court interpreter certification process. The video will range from approximately three to six minutes in length. The service provider will also produce still photographs from the video shootings. For the video, the service provider may be asked to secure necessary permissions to film in various locations with the assistance of the AOC as appropriate, to recruit court staff, AOC staff, or others to perform in the short video, to perform all necessary audio and video editing, and submit the video in a final electronic format. All images and videos, including raw footage, will become the property of the AOC.
- 2.7.2 The service provider shall be responsible for payment to any participants, if needed.
- 2.7.3 The AOC may assist the service provider with establishing contacts to facilitate gaining permissions to film within courthouses, as needed.
- 2.7.4 The AOC may assist the service provider with recruitment of appropriate participants, as needed.
- 2.7.5 The service provider will submit to the AOC at least 20 high quality, print ready digital photos from each filming session (total of 80 photos). Photos will be used for a variety of test administration purposes including but not limited to:
 - 2.7.5.1 The test administrator and AOC websites;
 - 2.7.5.2 Test administration information pamphlets; and
 - 2.7.5.3 Outreach efforts to test candidates.
- 2.7.6 All videos should:
 - 2.7.6.1 Be a high quality video production;

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2.7.6.2 Contain footage from actual testing locations and court locations;

2.7.6.3 Contain logos or graphics from the AOC; and

2.7.6.4 Contain live human participants in a real setting.

2.8 Internet Learning Platform for Prospective Court Interpreters

- 2.8.1 The service provider may be requested to assist in the implementation of an online course for prospective interpreters who have passed the written and oral examinations. The course will introduce prospective interpreters to courtroom protocol, familiarize them with courtroom setups, and further introduce them to the court interpreter profession. Specific content for the learning platform will be provided by the AOC. The course may include video vignettes, photos, scenarios and quizzes.
- 2.8.2 The service provider will limit access to the course to those who have passed both written and oral components of interpreting exams.
- 2.8.3 The service provider will be responsible for implementing the online course from the content provided by the AOC.
- 2.8.4 The service provider may suggest to the AOC a choice of possible platforms including Moodle² and Captivate³ for implementing the course.
- 2.8.5 The service provider will provide consultation on formatting of materials and methods for conveying content as will be appropriate to the chosen platform.
- 2.8.6 The service provider will create a secure website or otherwise make the course available in a controlled manner.
- 2.8.7 The service provider may divide the course into different sections which can be taken separately.
- 2.8.8 The service provider may build in data collection and cumulative data tracking into the course.
- 2.8.9 The service provider may build in the ability to submit assignments for review by staff.

² <http://moodle.org/about/>

³ <http://www.adobe.com/products/captivate.html>

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2.9 Tasks/Deliverables for Exam Administration

In providing the Exam administration Work of the Agreement, the Contractor shall perform the Tasks and provide the Deliverables within the estimated completion dates set forth in the following Table:

Table 1: Exam Administration Tasks/Deliverables

Deliverable #	Deliverable	Tasks	Estimated Completion Date
EA-1	Webpage	Develop Exam information content including but not limited to Exam dates, exam preparatory materials, registration process, and transparency of rater selection and appeals process.	TBD
EA-2	Written Exam Conversion	Convert two Written Exams from a digital form intended for hard copy printing to computer-based exams, including but not limited to: SME review of Written Exam content, correction of typographical errors, and final analysis of electronic format.	TBD
EA-3	Rater Selection	Identify and secure the services of a sufficient cadre of both in state and out of state academics and interpreter Raters to properly evaluate the results of the Oral Exams.	TBD

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Deliverable #	Deliverable	Tasks	Estimated Completion Date
EA-4	English-only Written Exam Administration	Obtain and coordinate Examination facilities, process Exam candidate registration information, collect filing fees as necessary, mail admission (scheduling) letters to candidates; and, distribute all necessary Examination materials on Exam dates (throughout contract period), including Examination administration instructions including instructions for Exam security and safeguarding to avoid Exam compromise; and, score the Written Exam battery and report the results to examinees; and, administer appeals process to address examinee complaints concerning the Exam.	TBD
EA-5	Proctor Training	Provide initial and refresher training to a sufficient cadre of Oral Exam Proctors to properly administer the Exams.	TBD
EA-6	Rater Training	Provide initial and refresher training to a sufficient cadre of Oral Exam Raters to properly evaluate the results of the Oral Exam.	TBD
EA-7	Report on examinee statistical data	Provide quarterly report on data for all English-only Written Examinations administered from TBD as outlined in section 2.2.7 of Exhibit A, Attachment 2.	TBD

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Deliverable #	Deliverable	Tasks	Estimated Completion Date
EA-8 (A)	Oral Exam Administration for Certified Court Interpreter Exams (Bilingual Oral Interpreting Exams) in Languages Determined by the State.	Obtain and coordinate Examination facilities, process Exam candidate registration information, collect filing fees as necessary, mail admission (scheduling) letters to candidates; and, distribute all necessary Examination materials on Exam dates TBD and administer the results of the oral Exams; and provide oversight of the raters in their evaluations of the Exams to ensure quality control of the rating process and verify the raters' accuracy; and, report results to examinees; and, administer appeals process to address examinee complaints concerning the Exam.	TBD
EA- 8 (B)	Oral Exam Administration for Registered Court Interpreter (English Oral Proficiency) Exams	Obtain and coordinate Examination facilities, process Exam candidate registration information, collect filing fees as necessary, mail admission (scheduling) letters to candidates; and, distribute all necessary Examination materials on Exam dates TBD and administer the results of the oral Exams; and provide oversight of the raters in their evaluations of the Exams to ensure quality control of the rating process and verify the raters' accuracy; and, report results to examinees; and, administer appeals process to address examinee complaints concerning the Exam.	TBD
EA-9	Annual Summary of Examination Activities	Report of final activities for all Written and Oral Examinations administered during contracts, as outlined in section 2.2.8 of Exhibit A, Attachment 2.	TBD
EA-10	Final disposition of Written and Oral Exam Appeals	Review and respond to all appeals associated with Written and Oral Examinations, as outlined in section 2.2.4 of Exhibit A, Attachment 2.	TBD
EA 11	Administration of Bilingual Oral Proficiency Exams	Obtain and coordinate Examination facilities, process Exam candidate registration information, collect filing fees as necessary, mail admission	TBD

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Deliverable #	Deliverable	Tasks	Estimated Completion Date
		(scheduling) letters to candidates; and, distribute all necessary Examination materials on Exam dates TBD and administer the results of the bilingual oral proficiency exams; and ensure quality control of the rating process; and, report results to examinees; and, administer appeals process to address examinee complaints concerning the bilingual oral proficiency exams as outlined in sections 2.6 – 2.6.2.5 of Exhibit A, Attachment 2.	
EA 12	Development of Court Interpreter Video Material	Develop a minimum of one video related to the court interpreter certification process as outlined in sections 2.7-2.7.6.4 of Exhibit A, Attachment 2.	TBD
EA 13	Implementation of Internet Learning Platform	Implement online learning platform for prospective court interpreters as outlined in sections 2.8- 2.8.9 of Exhibit A, Attachment 2.	TBD

3.0 Exam Development Services

The Contractor shall perform the following activities associated with the development of Exam material:

3.1 Oral Exam Development

3.1.1 Upon request by the AOC Project Manager, Contractor shall provide minor maintenance work for oral exam materials for Certified and Registered Court Interpreters in accordance with the Test Construction Manual of the Consortium for Language Access in the Courts and/or in accordance with the California Court Interpreters Program of the Administrative Office of the Courts. Maintenance may include modifying test content and/or revising recorded material in oral exams for up to three (3) languages identified by the AOC;

3.1.2 For the maintenance of Oral Exams, Contractor is hereby authorized to subcontract for Subject Matter Experts in the languages identified by the AOC

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- 3.1.3 Contractor will use a Senior Test Development Specialist to lead the test content maintenance process.
- 3.1.4 Acceptance. Pursuant to Exhibit C, General Provisions, Section 14, **Acceptance of the Work, acceptance of the Exam development Work will be based on the the Contractor’s completion of thorough test development and test validation processes, including the following:**
 - 3.1.4.1 Initial consultation with AOC Project Manager and Consortium SMEs to prepare test maintenance activities in accordance with Consortium guidelines;
 - 3.1.4.2 Conduct meeting with identified SMEs in identified languages to establish guidelines for maintenance work;
 - 3.1.4.3 Facilitate and monitor maintenance activities; ;
 - 3.1.4.4 Revise scoring units as appropriate and consult with Consortium SMEs to determine approval of final selected scoring units;
 - 3.1.4.5 Finalize Exam maintenance for SME review;
 - 3.1.4.6 If needed, coordinate meeting with 3-5 Subject Matter Experts in each identified language to review and validate translation, make revisions, and identify scoring units;
 - 3.1.4.7 If needed, coordinate and facilitate the recording of Exam content in identified languages;
 - 3.1.4.8 If needed, coordinate and facilitate final editing of recordings with SMEs in identified languages; and
 - 3.1.4.9 Submit recorded Exam content and revised script content to the Consortium for review and approval.

3.2 Tasks/Deliverables for Exam Development

In providing the Exam development Work of the Agreement for the period TBD, the Contractor shall perform the Tasks and provide the Deliverables within the estimated completion dates set forth in the following Table 2:

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Table 2: Exam Development Tasks/Deliverables

Deliverable #	Deliverable	Tasks	Due Date
ED-1	Maintenance on Up to 3 Oral Interpreting Exams or Oral English Proficiency Exams;	<ul style="list-style-type: none"> • Consult with AOC and Consortium experts and prepare Exam maintenance activities • Establish guidelines for maintenance work ; • Facilitate and monitor maintenance activities; • Revise scoring units as appropriate; • Coordinate and facilitate the recording of the Exam content and the editing of Exam content • Submit completed materials to the Consortium for review and approval. 	TBD

END OF EXHIBIT

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**EXHIBIT B
PAYMENT PROVISIONS**

1.0 Application Fees

- 1.1 During the period TBD through March 31, 2013, the Application Fees that the Contractor is authorized by the State to collect from Exam applicants who wish to take one (1) of the Exams shall be as set forth in the following Table 1:

Table 1, Exam Type and Application Fee Per Exam

<i>Exam Type</i>	<i>Application Fee Per Exam</i>
Written English Screening Exam	TBD
Certified Court Interpreter Exam	TBD
Registered Court Interpreter Exam	TBD
Bilingual Oral Proficiency Exam	TBD
Rescheduled Exam	TBD

- 1.2 The Contractor is solely responsible for collecting, holding, and accounting for the Application Fees, in addition to accurately reporting them to the State pursuant to the terms and conditions of this Agreement.

2.0 Contract Amount

- 2.1 The total amount the State may pay to the Contractor under this Agreement for performing the Work set forth in Exhibit A, Work to be Performed, **for the period TBD through March 31, 2013**, shall be the actual cost not to exceed the Contract Amount of **TBD**, as more specifically set forth in paragraph 3, Payment for Contract Work, of this Exhibit.
- 2.2 The Contractor has estimated the costs and expenses necessary to complete the Work. The State's acceptance of the Contractor's proposal and price does not (i) imply that the State approves of or adopts the Contractor's plan, means, methods, techniques, or procedures required to perform the Work, nor (ii) relieve the Contractor from the sole responsibility for the accuracy of its estimate and timely completion of the Work of this Agreement within the total amount for compensation set forth herein.

3.0 Payment for Contract Work

- 3.1 For performing the Work of this Agreement as described in Exhibit A, Work to be Performed, the Contractor shall collect fees in accordance with market rates for the administration of exams as set forth in Table 2, not to exceed **TBD** for the

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administration of Written Exams or **TBD** for the administration of Oral Court Interpreter Exams. The Contractor must not exceed **TBD** for the administration of Bilingual Oral Proficiency Exams. The State shall compensate the Contractor at the rates set forth in Table 2, below, per Exam candidate for each Registered Court Interpreter Exam candidate that has paid the applicable Application Fee to the Contractor, not to exceed a total of total of 90 Registered Oral Exams per Agreement year.

- 3.2 The State shall compensate Contractor the amounts set forth in Table 2, below The amounts set forth herein are inclusive of all costs, benefits, expenses, fees, overhead, and profits payable to the Contractor for services rendered to the State under this Agreement.

Table 2, Deliverables, Tasks, Amounts per Deliverable

Deliverable #	Deliverable	Tasks	Amount
EA-1	Webpage	Develop Exam information content including but not limited to Exam dates, exam preparatory materials, registration process, and transparency of rater selection and appeals process.	\$ _____ One-time Firm Fixed Fee.
EA-2	Written Exam Conversion	Convert two Written Exams from a digital form intended for hard copy printing to computer-based exams, including but not limited to: SME review of Written Exam content, correction of typographical errors, and final analysis of electronic format.	\$ _____ One-time Firm Fixed Fee
EA-3	Rater Selection	Identify and secure the services of a sufficient cadre of both in state and out of state academics and interpreter Raters to properly evaluate the results of the Oral Exams.	\$ _____ Firm Fixed Fee Per Rater Recruited

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Deliverable #	Deliverable	Tasks	Amount
EA-4	English-only Written Exam Administration	Obtain and coordinate Examination facilities, process Exam candidate registration information, collect filing fees as necessary, mail admission (scheduling) letters to candidates; and, distribute all necessary Examination materials on Exam dates (throughout contract period), including Examination administration instructions including instructions for Exam security and safeguarding to avoid Exam compromise; and, score the Written Exam battery and report the results to examinees; and, administer appeals process to address examinee complaints concerning the Exam.	\$ _____ Firm Fixed Fee Per Candidate Application for Year 1 of the Agreement. Year's 2 – 5 are subject to adjustment per Attachment 2, Exhibit B, Payment Provisions
EA-5	Proctor Training	Provide initial and refresher training to a sufficient cadre of Oral Exam Proctors to properly administer the Exams.	\$ _____ Firm Fixed Fee Per Training Session
EA-6	Rater Training	Provide initial and refresher training to a sufficient cadre of Oral Exam Raters to properly evaluate the results of the Oral Exam.	\$ _____ Firm Fixed Fee Per Training Session
EA-7	Report on examinee statistical data	Provide quarterly report on data for all English-only Written Examinations administered from TBD as outlined in section 2.2.7 of Exhibit A, Attachment 2.	\$ _____ Firm Fixed Fee Per Quarterly Report

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Deliverable #	Deliverable	Tasks	Amount
EA-8 (A)	Oral Exam Administration for Certified Court Interpreter Exams (Bilingual Oral Interpreting Exams) in Languages Determined by the State.	Obtain and coordinate Examination facilities, process Exam candidate registration information, collect filing fees as necessary, mail admission (scheduling) letters to candidates; and, distribute all necessary Examination materials on Exam dates TBD and administer the results of the oral Exams; and provide oversight of the raters in their evaluations of the Exams to ensure quality control of the rating process and verify the raters' accuracy; and, report results to examinees; and, administer appeals process to address examinee complaints concerning the Exam.	\$ _____ Firm Fixed Fee Per Candidate Application for Year 1 of the Agreement. Year's 2 – 5 are subject to adjustment per Attachment 2, Exhibit B, Payment Provisions
EA- 8 (B)	Oral Exam Administration for Registered Court Interpreter (English Oral Proficiency) Exams	Obtain and coordinate Examination facilities, process Exam candidate registration information, collect filing fees as necessary, mail admission (scheduling) letters to candidates; and, distribute all necessary Examination materials on Exam dates TBD and administer the results of the oral Exams; and provide oversight of the raters in their evaluations of the Exams to ensure quality control of the rating process and verify the raters' accuracy; and, report results to examinees; and, administer appeals process to address examinee complaints concerning the Exam.	\$ _____ Firm Fixed Fee Per Candidate Application for Year 1 of the Agreement. Year's 2 – 5 are subject to adjustment per Attachment 2, Exhibit B, Payment Provisions
EA-9	Annual Summary of Examination Activities	Report of final activities for all Written and Oral Examinations administered during contracts, as outlined in section 2.2.8 of Exhibit A, Attachment 2.	\$ _____ Firm Fixed Fee Per Annual Report
EA-10	Final disposition of Written and Oral Exam Appeals	Review and respond to all appeals associated with Written and Oral Examinations, as outlined in section 2.2.4 of Exhibit A, Attachment 2.	\$ _____ Firm Fixed Fee Per Annual Report

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Deliverable #	Deliverable	Tasks	Amount
EA 11	Administration of Bilingual Oral Proficiency Exams	Obtain and coordinate Examination facilities, process Exam candidate registration information, collect filing fees as necessary, mail admission (scheduling) letters to candidates; and, distribute all necessary Examination materials on Exam dates TBD and administer the results of the bilingual oral proficiency exams; and ensure quality control of the rating process; and, report results to examinees; and, administer appeals process to address examinee complaints concerning the bilingual oral proficiency exams as outlined in sections 2.6 – 2.6.2.5 of Exhibit A, Attachment 2.	\$ _____ Firm Fixed Fee Per Candidate Application for Year 1 of the Agreement. Year’s 2 – 5 are subject to adjustment per Attachment 2, Exhibit B, Payment Provisions
EA 12	Development of Court Interpreter Video Material	Develop a minimum of one video related to the court interpreter certification process as outlined in sections 2.7-2.7.6.4 of Exhibit A, Attachment 2.	\$ _____ Firm Fixed Fee per Video Developed and Deliverede
EA 13	Implementation of Internet Learning Platform	Implement online learning platform for prospective court interpreters as outlined in sections 2.8- 2.8.9 of Exhibit A, Attachment 2.	\$ _____ Firm Fixed Fee Upon Completion of Implementation

3.3 For years two, three, four, and five of this Agreement, on April 1 of each year, the Application Fees Per Exam set forth in Table 1 of this Exhibit B, and the prices for Deliverables EA-4, EA-8(A), EA-8(B), and EA-11 set forth in Table 2 of this Exhibit B, may be increased upon the parties execution of a bi-lateral Amendment to this Agreement, not to exceed the percentage change in the Employment Cost Index for private industry workers in the Management, Professional, and Related occupational group, from January to December of the prior year. Adjustments will not occur unless Contractor requests an increase in writing. If Contractor does not request an increase by March 1, the then-current rates may remain in effect for the applicable year. Any adjustment shall not be retroactive to a prior year.

3.4 The parties acknowledge and agree that the State makes no guarantee or promise as to (i) the minimum number of candidates that may apply to take any Exam provided for under this Agreement; or (ii) that the Contractor will receive a specific volume of work under this Agreement; or (iii) that the Contractor will receive a minimum volume of Application Fees; or (iv) receive a specific total contract amount, and

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nothing contained herein shall be deemed to constitute, or interpreted to mean, any such guarantee or promise.

- 3.5 The State shall not be responsible to pay Contractor for examination administration for more candidates than the not-to-exceed totals set forth in paragraph 3.A, above. Should the Contractor choose to provide examination administrations for more candidates than the not-to-exceed totals set forth in paragraph 3.A, above, the Contractor’s sole compensation for providing services to such additional candidates shall be the appropriate Application Fee Per Exam, as set forth in Table 1, below, paid to the Contractor by the candidate.
- 3.6 Except as may be revised by Amendment only, the total amount the State may pay the Contractor, pursuant to this provision, shall not exceed **TBD**.

4.0 Additional Compensation

- 4.1 Provided the Contractor has accurately and properly accounted for the Application Fees received pursuant to the collection, accounting, and reporting requirements contained herein, the Contractor shall be entitled to retain the Application Fees collected from prospective Exam candidates subject to the limitations set forth in this provision.
- 4.2 Estimates of the Application Fees to be collected by the Contractor for the Initial Term are contained in Table 3. The actual amount of Application Fees collected by the Contractor, however, will be determined by the actual number of candidates that apply for each particular type of Exam.

Table 3: Estimate of Application Fees to be Collected for the Initial Term

Exam Type	Application Fee Per Exam	Estimated No. of Candidates for All Exams	Estimated Amount of Application Fees to be Collected
English-Only Written Exam	TBD	1,200	TBD
Certified Court Interpreter Oral Exam	TBD	900	TBD
Registered Court Interpreter Oral Exam	TBD	30	TBD
Rescheduled Exam	TBD	10	TBD
Estimated Total Amount of Application Fees to be Collected:			TBD

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5.0 Total Compensation

The parties acknowledge that the total compensation the Contractor may receive for the Work of this Agreement will be the sum of the actual cost not-to-exceed Contract Amount as set forth in paragraph 2, Contract Amount, and calculated pursuant to paragraph 3, Payment for Contract Work, of this Exhibit, and the actual amount of Application Fees collected as set forth in paragraph 4, Additional Compensation, of this Exhibit.

6.0 Direct Expenses

All fees and charges noted in this Agreement are inclusive of any and all travel, lodging, transportation, clerical support, Materials, fees, overhead, profits, and other costs and/or expenses incidental to the performance of the specified requirements under this Agreement.

7.0 Other Expenses

The State shall not consider reimbursement for costs not defined as allowable in this Agreement, including but not limited to any administrative, operating, travel, meals, and lodging expenses incurred during the performance of this Agreement.

8.0 Taxes

The State is exempt from federal excise taxes and no payment will be made for any taxes levied on the Contractor's or any Subcontractor's employees' wages. The State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement.

9.0 Method of Payment

9.1 The Contractor shall submit an invoice for Work provided upon completion of the Deliverables, as set forth in Exhibit A, Work to be Performed, but no more often than once a month. After receipt of invoice, the State will either approve the invoice for payment or give the Contractor specific written reasons why part or all of the payment is being withheld and what remedial actions the Contractor must take to receive the withheld amount.

9.2 Together with its invoice, the Contractor shall submit a statement setting forth the total amount of Application Fees collected, including the number and type of Examination applications (i.e., Certified Court Interpreter Examination or Registered Court Interpreter Examination) and associated Application Fees.

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9.3 The State will make payment in arrears after receipt of the Contractor's properly completed invoice. Invoices shall clearly indicate the following:

- 9.3.1 The Contract number;
- 9.3.2 A unique invoice number;
- 9.3.3 The Contractor's name and address;
- 9.3.4 Taxpayer identification number (the Contractor's federal employer identification number);
- 9.3.5 A statement indicating the number of Exams administered, type of Exams, and Exam site locations, as well as description of other completed Work, including services rendered, Task(s) performed, and/or Deliverable(s) made, as appropriate;
- 9.3.6 The contractual charges, including the appropriate contractual charges, or price(s) as set forth under this Contract; and,
- 9.3.7 Preferred remittance address, if different from the mailing address.

9.4 The Contractor shall submit one (1) original and two (2) copies of invoices to:

Judicial Council of California
Administrative Office of the Courts
c/o Finance Division, Accounts Payable
455 Golden Gate Avenue, 7th Floor
San Francisco, CA 94102-3688

9.5 Please note that invoices or vouchers not on printed bill heads shall be signed by the Contractor or the person furnishing the supplies or services.

10.0 Non-Duplication of Funds

The Contractor and Subcontractor(s) certify that there are no ongoing or completed projects with the State, or other funding sources, that duplicate or overlap any Work contemplated or described in this Agreement. The Contractor agrees that any pending or proposed request for other funds that would duplicate or overlap work under this Agreement will be revised to exclude any such duplication of funded expenditures. Any such duplication of expenditures subsequently determined by audit will be subject to recovery by the State.

11.0 Disallowance

If the Contractor claims or receives payment from the State for a service or reimbursement that is later disallowed by the State, the Contractor shall promptly refund the disallowed amount to the State upon the State's request. At its option, the State may offset the amount disallowed from any payment due or that may become due to the Contractor under this Agreement or any other agreement.

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12.0 Payment Does Not Imply Acceptance of Work

The granting of any payment by the State as provided herein, shall in no way lessen the liability of the Contractor to replace unsatisfactory Work or Material, even if the unsatisfactory character of such Work or Material may not have been apparent or detected at the time such payment was made. Materials, Data, components, or workmanship that do not conform to Exhibit A, Work to Be Performed, shall be rejected and shall be replaced by the Contractor without delay.

END OF EXHIBIT

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**EXHIBIT C
GENERAL PROVISIONS**

1. Agreement Term

The term of the Agreement shall be for a five-year period commencing on **TBD** and expiring on **March 31, 2017, subject to the availability of funds as set forth in Paragraph 21 of this Exhibit C.**

2. Representations and Warranties

- A. **Contractor's Representations and Warranties.** Contractor represents and warrants that the following statements are true:
- i. **No Gratuities.** Contractor has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise) to any Judicial Branch Personnel with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.
 - ii. **No Conflict of Interest.** Contractor has no interest that would constitute a conflict of interest under California Government Code section 1090 et seq. or section 87100 et seq., or under California Rules of Court 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.
 - iii. **Authority.** Contractor has the authority to enter into this Agreement, to perform the obligations set out in this Agreement, and its representative who signs this Agreement has the authority to do so. This Agreement constitutes a valid and binding obligation of Contractor, enforceable in accordance with its terms.
 - iv. **No Interference with other Agreements.** This Agreement does not constitute a conflict of interest or default under any other of Contractor's other agreements.
 - v. **No Litigation.** No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect Contractor's ability to perform its obligations under this Agreement.
 - vi. **Drug Free Workplace.** Contractor provides a drug-free workplace as required by California Government Code sections 8355-8357.
 - vii. **Work Eligibility.** Contractor's personnel assigned to this Agreement are able to work legally in the United States and possess valid proof of work eligibility.
 - viii. **GAAP.** The Contractor maintains an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles.

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ix. **Compliance.**

- a. **Obligations.** Contractor pays all undisputed debts when they come due.
- b. **Laws-General.** Contractor is in compliance with all laws, rules and regulations applicable to its business, including all federal, state and local laws and regulations with respect to employment matters.
- c. **Laws-Specific:**
 - i) **Non-discrimination.** Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical, including HIV or AIDS), marital or domestic partner status, medical condition (including cancer or genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender identity), and sexual orientation.
 - ii) **No Harassment.** Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of this Agreement. Contractor takes all reasonable steps to prevent unlawful harassment from occurring.
 - iii) **Employment and Labor Laws.** Contractor also complies with applicable provisions of the federal Americans with Disabilities Act (42 U.S.C. 12101, et seq.), California's Fair Employment and Housing Act, California Government Code section 12990 et seq., and California Code of Regulations, title 2, section 7285 et seq.
 - iv) **Americans with Disabilities Act.** Contractor complies with applicable provisions of the Americans with Disabilities Act ("ADA") of 1990 (42 U.S.C. Sections 012101 et seq.), which prohibits discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.

- B. **Contractor's Covenant -Representations and Warranties to Remain True.** During the Term, Contractor will not take an action, or omit to perform any act, that may result in a representation and warranty becoming untrue. Contractor must immediately notify the AOC if any representation and warranty becomes untrue.

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3. Indemnification

The Contractor shall indemnify, defend (with counsel satisfactory to the State), and save harmless the State and its officers, agents, and employees from any and all claims and losses accruing or resulting to any and all other contractors, Subcontractors, suppliers, and laborers, and any other person, firm, or corporation furnishing or supplying Work, Materials, Data, or services in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Contractor or its agents or employees in the performance of this Agreement.

4. Relationship of Parties

The Contractor and the agents and employees of the Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officer or employee of the State of California. Contractor is an independent contractor to the AOC. No employer-employee, partnership, or joint venture exists between Contractor or its personnel and the AOC. Nothing Contractor does, or fails to do, in the performance of this Agreement will make Contractor or its personnel an employee of the AOC. The AOC will not provide to Contractor or its personnel the benefits that the AOC gives to employees. If the Internal Revenue Service or any other federal or State governmental agency inquires about Contractor's status as an independent contractor, Contractor must inform the AOC and let the AOC participate in any discussion or negotiation with the Internal Revenue Service or any federal or State governmental agency.

5. Consideration

The consideration to be paid to the Contractor under this Agreement shall be compensation for all the Contractor's expenses incurred in the performance of this Agreement, including travel and per diem, unless otherwise expressly provided.

6. Manner of Performance of Work

The Contractor shall complete all Work specified in these Contract Documents to the State's satisfaction. The Contractor shall conduct all work consistent with professional standards for the industry and type of work being performed under the Agreement.

7. Services Warranty

The Contractor warrants and represents that each of its employees, independent contractors or agents assigned to perform any services under this Agreement shall have the skills, training, and background reasonably commensurate with his or her level of performance or responsibility, so as to be able to perform in a competent and professional manner. The Contractor further warrants that the services provided hereunder will be performed in a

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competent and professional manner. All warranties, including any special warranties specified elsewhere herein, shall inure to the State, its successors and assigns.

8. Permits and Licenses

The Contractor will, and will ensure that each of its employees, independent contractors or agents assigned to perform any services under this Agreement, observe and comply with all federal, state, city, and county laws, rules, and regulations affecting services under this Agreement. The Contractor will, and will ensure that its employees, independent contractors and agents, procure and keep in full force and effect during the term of this Agreement, all permits and licenses necessary to accomplish the Work contemplated in this Agreement.

9. Personnel

- A. The State reserves the right to disapprove the continuing assignment of any of the Contractor's personnel assigned to perform Work under this Agreement if in the State's opinion, the performance of the Contractor's personnel is unsatisfactory. The State agrees to provide Notice to the Contractor in the event it makes such a determination. If the State exercises this right, the Contractor will immediately assign replacement personnel, possessing equivalent or greater experience and skills.
- B. If any of Contractor's personnel critical to the Work of the Agreement become unavailable during the term of this Agreement, the Contractor will supply replacement personnel acceptable to the AOC Project Manager.
- C. If any of Contractor's personnel critical to the Work of the Agreement become unavailable during the term of this Agreement, and if Contractor cannot furnish an acceptable replacement, the Contractor is in default and the State may terminate this Agreement for cause pursuant to Exhibit C, General Provisions, paragraph 11, Default and Remedies, and Exhibit C, General Provisions, paragraph 12, Termination; Effect of Expiration or Termination.

10. Insurance

- A. **Basic Coverage.** Contractor must maintain at its expense the following insurance during the Term:
 - i. **Commercial General Liability.** This policy must include all coverage in the Insurance Services Office (ISO) Commercial General Liability Coverage "occurrence" form, CG 0001 (including products and completed operations and blanket contractual liability covering the indemnities contained in this Agreement) with no coverage deletions or exceptions, with limits not less than \$1,000,000.00 for each occurrence, combined single limit bodily injury and property damage.

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- ii. **Professional Liability.** This policy must cover Contractor's performance under this Agreement, at minimum limits of \$1,000,000.00 per claim.
 - iii. **Workers' Compensation/Employer's Liability.** This policy is required only if Contractor has employees, or hires employees any time during the Term. The policy must include workers' compensation coverage that meets applicable statutory requirements, and employer's liability coverage for bodily injury and property damage at minimum limits of \$500,000.00 each for (i) each accident, (ii) disease policy limit, and (iii) disease – each employee.
 - iv. **Automobile Liability.** This policy must cover bodily injury and property damage and be applicable to all vehicles, whether owned, non-owned, leased, or hired. Contractor may substitute personal automobile liability insurance, if Contractor has no transportation or hauling responsibilities under this Agreement. The minimum liability limit will be \$1,000,000.00 per occurrence, combined single limit.
- B. **Claims Made" Coverage.** If any required policy is written on a "claims made" form, Contractor must maintain the coverage continuously throughout the Term, and, without lapse, for three years beyond the termination or expiration of this Agreement and the AOC's acceptance of all Services provided under this Agreement. The retroactive date or "prior acts inclusion date" of any "claims made" policy must be no later than the date that Services commence under this Agreement.
- C. **Umbrella Policies.** Contractor may satisfy basic coverage limits through any combination of basic coverage and umbrella coverage.
- D. **Deductibles and Self-Insured Retentions.** Contractor must declare to the AOC all deductibles and self-insured retentions, and they are subject to the AOC's approval. Deductibles and self-insured retentions do not limit Contractor's liability.
- E. **Certificates of Insurance.** Contractor must have its insurance broker or agent send the AOC certificates of insurance and endorsements attesting to the existence of coverage and providing that the policies cannot be canceled, allowed to lapse, terminated or amended to reduce coverage without thirty (30) days' prior written notice to the AOC. The certificates must reference the agreement number of this Agreement. Contractor must require its Commercial General Liability policy carrier to endorse Contractor's policy to include the Judicial Branch Entities and Judicial Branch Individuals as additional insureds with respect to liability arising out of its Services. Contractor must send all certificates and endorsements sent to the AOC's Business Services Manager, at the address listed on the Coversheet.
- F. **Qualifying Insurers.** For insurance to satisfy the requirements of this section, all required insurance must be issued by a carrier with an A.M. Best rating of A-/VII or better that is authorized to transact business in the State.
- G. **Required Policy Provisions.** Each policy must provide, as follows:

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- i. **Insurance Primary; Waiver of Subrogation.** The policy is primary and non-contributory with any insurance or self-insurance programs carried or administered by Judicial Branch Entities and Judicial Branch Personnel. For Workers' Compensation and Professional Liability insurance, the insurer waives any and all rights of subrogation against Judicial Branch Entities and Judicial Branch Personnel.
- ii. **Application.** The policy applies separately to each insured against whom a claim is made and/or a lawsuit is brought, to the limits of the insurer's liability.
- H. **Consequences of Lapse.** If required insurance lapses during the Term, the AOC is not required to process invoices after such lapse until Contractor provide evidence of reinstatement that is effective as of the lapse date.

11. Agreement Administration/Communication

- A. Under this Agreement, the AOC Project Manager, TBD, shall monitor and evaluate the Contractor's performance. All requests and communications about the Work to be performed under this Agreement shall be made through the AOC Project Manager.
 - i. Any Notice from the Contractor to the State shall be in writing and shall be delivered to the AOC Project Manager as follows:

TBD, Project Manager
Judicial Council of California
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102-3688

- ii. Notice to the Contractor shall be directed in writing to:

TBD

12. Default and Remedies

- A. A default exists under this Agreement if:
 - i. Any of the representations or warranties set forth in this Exhibit become untrue, or Contractor makes a material misrepresentation regarding the personnel involved in or any aspect of its performance of the Work; or
 - ii. Contractor fails or is unable to meet or perform any of its duties under this Agreement, and
 - a. if capable of cure, such failure is not cured within 10 days of receipt of notice of failure; or

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- b. the failure is not capable of being cured.
 - B. Whether or not any failure by Contractor is capable of cure, or is cured, is within the sole discretion of the State. Contractor will notify the State immediately if a default occurs, or if Contractor receives information that a third party claim or dispute that alleges facts that would constitute a default under this Agreement is filed or threatened.
 - C. The State may terminate this entire Agreement for cause upon notice to Contractor that a default exists. The State may reduce the amount of Work and, proportionately, the compensation, if it determines that having Contractor perform the Work has become infeasible due to changes in applicable laws or regulations. If the Agreement is terminated, the State may proceed with the Work in any manner it deems proper. The cost to the State to perform this Agreement shall be deducted from any sum due the Contractor under this Agreement or any other agreement, and the balance, if any, shall be paid to the Contractor upon demand.
13. Termination; Effect of Expiration or Termination

1.1 Early Termination.

- 1.1.1 The AOC may terminate this Agreement in whole or in part “for cause” if Contractor is in default.
- 1.1.2 The AOC may terminate this Agreement in whole or in part, or modify or limit the Services and, proportionately, Contractor’s compensation, if:
 - a. The AOC determines that having Contractor provide the Services has become infeasible due to changes in applicable laws or regulations, or
 - b. Expected or actual funding to compensate Contractor is withdrawn, reduced or limited.
- 1.1.3 The AOC may terminate this Agreement in whole or in part at any time for any or no reason upon ten (10) days written notice.
- 1.1.4 In the event a federal or State tax or employment agency concludes that an independent contractor relationship does not exist, either Contractor or the AOC may terminate this Agreement immediately upon written notice.

1.2 Effect of Expiration and Early Termination; Survival.

Upon receipt of any termination notice from the AOC, Contractor must promptly discontinue all affected Services unless the notice specifies otherwise.

- 1.2.1 Upon the End Date:

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- a. The AOC will be released from compensating Contractor for Services other than those Contractor satisfactorily performed prior to the End Date.
- b. Contractor must submit Contractor's final invoice for payment within sixty (60) days of the End Date. The AOC will not pay any Contractor invoice received after this period.
- c. Contractor will be released from performing Services, except for Services in any non-terminated portion of the Agreement.

1.2.2 All rights and duties in this Exhibit C, as well as the Disallowance and Payment Does Not Imply Acceptance of Work provisions of Exhibit B, will survive the expiration or termination of this Agreement.

1.2.3 The termination or expiration of the Agreement shall not relieve either party of any obligation or liability accrued hereunder prior to or subsequent to such termination or expiration, nor affect or impair the rights of either party arising under the Agreement prior to or subsequent to such termination or expiration, except as expressly provided herein.

14. Acceptance of the Work

- A. The AOC Project Manager shall be responsible for the sign-off acceptance of all the Work required and submitted pursuant to this Agreement. Prior to approval of the Work and prior to approval for payment, the AOC Project Manager will apply the acceptance criteria set forth in subparagraph B of this provision, as appropriate, to determine the acceptability of the Work provided by the Contractor. Unsatisfactory ratings will be resolved as set forth in this provision.
- B. Acceptance Criteria for Work ("**Criteria**") provided by the Contractor pursuant to this Agreement:
 - i. Timeliness: The Work was delivered on time;
 - ii. Completeness: The Work contained the Data, Materials, and features required in the Contract; and
 - iii. Technical accuracy: The Work is accurate as measured against commonly accepted standard (for instance, a statistical formula, an industry standard, or de facto marketplace standard).
- C. The Contractor shall provide the Work to the State, in accordance with direction from the AOC Project Manager. The State shall accept the Work, provided the Contractor has delivered the Work in accordance with the Criteria. The AOC Project Manager shall use the Acceptance and Signoff Form, provided as Attachment 1 to this Agreement, to notify the Contractor of the Work's acceptability.

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- D. If the State rejects the Work provided, the AOC Project Manager shall submit to the Contractor a written rejection using Attachment 1, the Acceptance and Signoff Form, describing in detail the failure of the Work as measured against the Criteria. If the State rejects the Work, then the Contractor shall have a period of ten (10) business days from receipt of the Notice of rejection to correct the stated failure(s) to conform to the Criteria.
- E. If the AOC Project Manager requests further change, the Contractor shall meet with the AOC Project Manager, within three (3) business days of such request, to discuss changes for the final submission of the Work. The Contractor shall provide the Work within three (3) business days after this meeting, at which time the Work will be accepted or the question of its acceptability referred to the Administrative Director of the AOC and a principal of the Contractor, as set forth in subparagraph F below.
- F. If agreement cannot be reached between the AOC Project Manager and the Contractor on the Work's acceptability, a principal of the Contractor and the Administrative Director of the AOC, or its designee, shall meet to discuss the problem. If agreement cannot be reached, in the reasonable judgment of the Administrative Director of the AOC, or its designee, and/or the Contractor fails to cure such deficiencies that are perceived in the Work to the reasonable satisfaction of the Administrative Director, or its designee, in the reasonable time established by the Administrative Director, the State may reject the Work and will notify the Contractor in writing of such action and the reason(s) for so doing. Upon rejection of the Work, the State may terminate this Agreement pursuant to the terms of the Default and Remedies provision of this Exhibit C.
15. Ownership of Results
- A. **Deliverables.** All Data and Deliverables prepared by the Contractor specifically for delivery to the State shall become the property of the State.
- B. **Technical Elements.** In performing the Work, the Contractor may use certain data, modules, components, designs, utilities, subsets, objects, program listings, tools, models, methodologies, programs, systems, analysis frameworks, leading practices, and specifications developed or used by Contractor or its licensors, or to which the Contractor otherwise has rights, including all additions, improvements and modifications made thereto in the course of the Contractor performing the Work (collectively, "Technical Elements"). The State shall have no rights in or to the Technical Elements, except with respect to Technical Elements solely to the extent necessary for the State to use the Deliverables as permitted by this Agreement. The Contractor retains all right to use its knowledge, experience and know-how, including the Technical Elements, in providing services to other clients.

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- C. The Contractor agrees not to assert any rights at common law, or in equity, or establish any claim to statutory copyright in such Data. The Contractor shall not publish or reproduce such Data in whole, or part, or any manner or form, or authorize others to do so without the written consent of the State.

16. Ownership of Intellectual Property, Etc.

- A. The Contractor acknowledges and agrees that all Exams, whether Certified Court Interpreter Exams or Registered Court Interpreter Exams, and Exam Materials are the proprietary property of the State, and furnished hereunder, are provided for the Contractor's use for the purposes of this Agreement only. All such proprietary Exams and Exam Material shall remain the property of the State and all ownership and control of the above Exams and Exam Materials, including any copyright, patent rights, and all other intellectual property rights therein, shall vest exclusively with the State. The Contractor agrees to take all reasonable steps to insure that such proprietary Exams and Exam Materials are not disclosed to others, without prior written consent of the State.
- B. Unless the Contractor and the State reach a written agreement to the contrary, the Contractor agrees for itself and its personnel that pursuant to the State's requirement (a) all artwork, including photographs and videos, and all documents, deliverables, software, systems designs, disks, tapes, and any other Data or Materials created in whole or in part by the Contractor in the course of or related to providing services to the State shall be treated as if it were "work for hire" for the State, and (b) the Contractor will immediately disclose to the State all discoveries, inventions, enhancements, improvements, and similar creations (collectively, "**Creations**") made, in whole or in part, by the Contractor in the course of or related to providing services to the State.
- C. All ownership and control of the Data, Materials, and Creations set forth in subparagraph B above, including any copyright, patent rights, and all other intellectual property rights therein, shall vest exclusively with the State, and the Contractor hereby assigns all right, title, and interest that the Contractor may have in such Data, Materials, and Creations to the State, without any additional compensation and free of all liens and encumbrances of any type. The Contractor affirms that the amount encumbered under this Agreement for the Work performed includes payment for assigning such rights to the State. The Contractor agrees to execute any documents required by the State to register its rights and to implement the provisions herein.

17. Copyrights and Rights in Data

- A. The State reserves the right to use and copyright, in whole or in part, any Data, produced with funding from this Agreement.

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- B. The Contractor agrees not to copyright any Data produced with funding from this Agreement unless the State gives the Contractor express permission to do so. If such permission is obtained and the Data is copyrighted, the State will be given an exemption that reserves for it the right to use, duplicate, and disseminate the Data without fee.

18. Confidentiality

- A. Both the State and the Contractor acknowledge and agree that in the course of performing the Work under this Agreement, the State may disclose Confidential Information to the Contractor.
- B. The Contractor agrees not to disclose the Confidential Information to any Third Party and to treat it with the same degree of care as it would its own confidential information. It is understood, however, that the Contractor may disclose the State's Confidential Information on a "need to know" basis to the Contractor's employees and Subcontractors and, as directed by the AOC Project Manager, representatives of the State that are working on the Project. All such employees and Subcontractors of the Contractor shall have executed a confidentiality agreement with the Contractor requiring a promise of confidentiality concerning the Contractor's clients and business.
- C. The Contractor shall acquire no right or title to the Confidential Information. The Contractor agrees not to use the Confidential Information for any purpose except as contemplated pursuant to this Agreement. Notwithstanding the foregoing, the Contractor may disclose the Confidential Information (i) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it; (ii) as appropriate to respond to any summons or subpoena applicable to it; or (iii) to the extent necessary to enforce its rights under this Agreement.

19. Subcontracting

- A. **Permitted Subcontracts.** Contractor may not subcontract its duties under this Agreement without the AOC's prior written consent. Consent may be withheld for any reason or no reason.
- B. **Requirements.** Any subcontract by Contractor will take effect only if there is a written agreement between Contractor and each subcontractor, stating each subcontractor:
 - i. Makes the representations and warranties made by Contractor in this Agreement; and
 - ii. Appoints the AOC an intended third party beneficiary under the written agreement.

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- C. **No Release.** No subcontract will release Contractor from its duties under this Agreement.

20. Assignment; Successors

A. **Permitted Assignments.**

- i. Contractor may not assign Contractor's rights or duties under this Agreement without the AOC's prior written consent. Consent may be withheld for any reason or no reason. Any attempted assignment will be void or invalid.
- ii. The AOC may assign its rights and duties to any State entity. The AOC will notify Contractor in writing within thirty (30) days following the assignment.
- iii. Any assignment by Contractor will take effect only if there is a written agreement between Contractor and all assignees, stating the assignees:
 - a. Are jointly and severally liable to the AOC for performing Contractor's duties in this Agreement;
 - b. Affirm the rights granted in this Agreement to the AOC;
 - c. Make the representations and warranties made by Contractor in this Agreement; and
 - d. Appoint the AOC an intended third party beneficiary under the written agreement.
- iv. No assignment will release either party of its duties under this Agreement.

- B. **Successors.** This Agreement binds the parties as well as their heirs, successors, and assignees.

21. State's Obligation Subject to Availability of Funds

- A. The State's obligation under this Agreement is subject to the availability of authorized funds. The State may terminate the Agreement or any part of the Contract Work, without prejudice to any right or remedy of the State, for lack of appropriation of funds. If expected or actual funding is withdrawn, reduced or limited in any way prior to the expiration date set forth in this Agreement, or in any Amendment hereto, the State may terminate this Agreement in whole or in part, upon written Notice to the Contractor. Such termination shall be in addition to the State's rights to terminate for convenience or default.
- B. Payment shall not exceed the amount allowable for appropriation by Legislature. If the Agreement is terminated for non-appropriation:

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- i. The State will be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the effective date of termination; and
 - ii. The Contractor shall be released from any obligation to provide further services pursuant to the Agreement as are affected by the termination.
- C. Funding for this Agreement beyond the current appropriation year is conditional upon appropriation by the Legislature of sufficient funds to support the activities described in this Agreement. Should such an appropriation not be approved, the Agreement may terminate at the close of the current appropriation year. The appropriation year ends on June 30 of each year.

22. Stop Work

- A. The State may, at any time, by written Notice to the Contractor, require the Contractor to stop all, or any part, of the Work of this Agreement, for a period up to ninety (90) Days after the Notice is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this provision. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Stop Work Order during the period of Work stoppage. Within a period of ninety (90) Days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
- i. Cancel the Stop Work Order; or
 - ii. Terminate the Work covered by the Stop Work Order as provided for in either of the termination provisions of this Agreement.
- B. If a Stop Work Order issued under this provision is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume Work. The State shall make an equitable adjustment in the delivery schedule, the Contract Amount, or both, and the Agreement shall be modified, in writing, accordingly, if:
- i. The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Agreement; and
 - ii. The Contractor asserts its right to an equitable adjustment within thirty (30) Days after the end of the period of Work stoppage; however, if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Agreement.

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- C. If a Stop Work Order is not canceled and the Work covered by the Stop Work Order is terminated in accordance with the Termination Other Than For Cause provision or the State's Obligation Subject to Availability of Funds provision, as set forth under Exhibit B, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- D. The State shall not be liable to the Contractor for loss of profits because of the Stop Work Order issued under this provision.

23. Limitation on Publication

- A. The Contractor shall not publish or submit for publication any article, press release, or other writing relating to the Contractor's services for the State without prior review and written permission by the State.
- B. The State review shall be completed within thirty (30) Days of submission to the AOC Project Manager and, if permission is denied, the State shall provide its reasons for denial in writing.

24. Limitation on State's Liability

The State shall not be responsible for loss of or damage to any non-State equipment arising from causes beyond the State's control.

25. Changes and Amendments

Changes or Amendments to any component of this Agreement can be made only with prior written approval from the AOC Project Manager. Requests for changes or Amendments must be submitted in writing and must be accompanied by a narrative description of the proposed change and the reasons for the change. Additional funds may not be encumbered under the Agreement due to an act of Force Majeure, although the performance period of the Agreement may be amended due to an act of Force Majeure. After the AOC Project Manager reviews the request, a written decision shall be provided to the Contractor. Alteration or variation of the terms of this Agreement shall not be valid unless made in writing and signed by the parties, and an oral understanding or agreement that is not incorporated shall not be binding on any of the parties.

26. Retention of Records

The Contractor shall maintain all financial Data, supporting documents, and all other records relating to performance and billing under this Agreement for a period in accordance with State and Federal law, a minimum retention period being no less than four (4) years. The

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retention period starts from the date of the submission of the final payment request. The Contractor is also obligated to protect Data adequately against fire or other damage.

27. Audit

The Contractor shall permit the authorized representative of the State or its designee or both at any reasonable time to inspect or audit all Data relating to performance and billing to the State under this Agreement. The Contractor further agrees to maintain such Data for a period of four (4) years after final payment under this Agreement.

28. Publicity

Contractor must not make any public announcement, press release, or other writing relating to this Agreement that is not itself part of the Services without the AOC Business Services Manager's prior written approval. In no event will the AOC Business Services Manager approve any writing that could be construed as an endorsement of the Contractor.

29. Choice of Law

California law, without regard to its choice-of-law provisions, governs this Agreement.

30. Severability

If any term or provision of this Agreement is found to be illegal or unenforceable, this Agreement shall remain in full force and effect and that term or provision shall be deemed stricken.

31. Evaluation of Contractor

The State shall evaluate the Contractor's performance under the Agreement.

32. Waiver

The omission by either party at any time to enforce any default or right, or to require performance of any of this Agreement's terms, covenants, or provisions by the other party at the time designated, shall not be a waiver of the default or right, nor shall it affect the right of the party to enforce those provisions later.

33. Negotiated Agreement

The parties have negotiated this Agreement. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code section 1654.

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34. Counterparts

This Agreement may be executed in counterparts, each of which is considered an original.

35. Time of Essence

Time is of the essence in this Agreement.

36. Non-Exclusive Nature of Agreement

Contractor may perform work for any other person or entity, provided that the other work does not interfere with the Services. The AOC may use other contractors to perform any work. The AOC does not guarantee Contractor will work a certain number of hours or be offered a certain number of projects.

37. Authority and Binding Effect

Each party warrants it has the authority to enter into this Agreement, it may perform as provided for in this Agreement, and its representative who signs this Agreement has the authority to do so. Each party warrants this Agreement constitutes a valid and binding obligation of the party, enforceable in accordance with its terms. This Agreement will not bind the AOC until it is signed by a duly authorized representative of the AOC.

38. SB 78 Appendix

This Agreement incorporates the terms and conditions set forth in the appendix entitled “SB 78 Appendix for Agreements” (SB 78 Appendix), attached to this Agreement. If there is any conflict between a provision in the SB 78 Appendix and any other provision of this Agreement, the provision contained in the SB 78 Appendix prevails.

39. Entire Agreement

This Agreement, consisting of all documents as defined herein, constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous proposals, both oral and written, negotiations, representations, commitments, writing and all other communications between the parties.

END OF EXHIBIT

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EXHIBIT D
DEFINITIONS

1. Definitions

Terms defined below and elsewhere throughout the Contract Documents shall apply to the Agreement as defined:

- A. **“Acceptance”** is the written acceptance issued by the AOC after the Contractor has completed a Deliverable, submittal, Task, or other contract requirement, in compliance with this Agreement.
- B. **“Administrative Director”** refers to that individual, or authorized designee, empowered by the State to make final and binding executive decisions on behalf of the State.
- C. **“Amendment”** means a written document issued by the State and signed by the Contractor which alters the Contract Documents and identifies the following: (i) a change in the Work; (ii) a change in Contract Amount; (iii) a change in time allotted for performance; and/or (iv) an adjustment to the Agreement terms.
- D. **“Annual Summary of Examination Activities”** means the report summarizing the Work that includes, but is not limited to the following: number of Exam administrations, total number of applicants examined, total number of successful (passing) applicants, total number of applicant appeals and grievances and decisions made thereon, revision or rotation of Exam Items or Exam Materials, and results of inter-Rater reliability studies.
- E. **“Application Fees”** are the fees that the Contractor is authorized by the State to collect from Exam applicants who wish to take one (1) of the Exams.
- F. **“Certified Court Interpreter Examinations”** or **“Certified Court Interpreter Exams”** means the oral or written portion or both portions of the test for interpretation fluency in a Designated Language in court proceedings that serves as part of the assessment and certification by the State of certified court interpreters in the California court system. **Certified Court Interpreter Examinations** or **Certified Court Interpreter Exams** are the proprietary property of the State.
- G. **“Confidential Information”** means trade secrets, financial, statistical, personnel, technical, and other Data and information relating to the State’s business or the business of its constituents. Confidential Information does not include (i) information that is already known by the receiving party, free of obligation of confidentiality to the disclosing party; (ii) information that becomes generally

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available to the public, other than as a result of disclosure by the receiving party in breach of this Agreement; (iii) information that is independently developed by the receiving party without reference to the Confidential Information; and (iv) information that the receiving party rightfully obtains from a Third Party free of the obligation of confidentiality to the disclosing party.

- H. The “**Contract**” or “**Contract Documents**” constitute the entire integrated agreement between the State and the Contractor, as attached to and incorporated by a fully executed State Standard Agreement form. The terms “Contract” or “Contract Documents” may be used interchangeably with the term “**Agreement.**”
- I. “**Contract Amount**” means the total amount encumbered under this Agreement for any payment by the State to the Contractor for performance of the Work, in accordance with the Contract Documents.
- J. “**Contract Staff**” means the Subcontractors and/or Subject Matter Experts that the Contractor retains in connection with this Agreement to proctor Exams, rate oral Exams on the Rater Panel, and/or provide skilled input regarding Exam content, development, and maintenance.
- K. The “**Contractor**” means the individual, association, partnership, firm, company, consultant, corporation, affiliates, or combination thereof, including joint ventures, contracting with the State to do the Contract Work. The Contractor is one of the parties to this Agreement.
- L. “**Coversheet**” means the signature page of this Agreement.
- M. “**Credentialing**” refers to qualifying an individual to serve as a court interpreter through the certification process for designated languages, and the registration process for nondesignated languages.
- N. “**Data**” means all types of raw data, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.
- O. “**Day**” means calendar day, unless otherwise specified.
- P. “**Deliverable(s)**” or “**Submittal(s)**” means one or more items, if specified in the Contract Documents, that the Contractor shall complete and deliver or submit to the State for acceptance.
- Q. “**Designated Languages**” means those languages selected by the State as subject matter for Exams for the certification program for court interpreters in the California court system. The Designated Languages with full bilingual oral interpreting exams

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under this Agreement are Arabic, Cantonese, Eastern Armenian, Khmer, Korean, Mandarin, Portuguese, Punjabi, Russian, Spanish, Tagalog, and Vietnamese. (Farsi has been designated and may be ready for exam administration in 2012.)

- R. **“Disabled Veteran Business Enterprise”** or **“DVBE”** means any person or entity that has been certified by the California Department of General Services’ Office of Small Business and Disabled Veteran Business Enterprise Services as a “Disabled Veteran Business Enterprise.”
- S. **“End Date”** means the date when this Agreement as a whole expires or is terminated pursuant to Exhibit C, Section 11 and Section 12.
- T. **“Exam(s) or Examination(s)”** means either Certified Court Interpreter Exam(s) or Registered Court Interpreter Exam(s), or both Certified Court Interpreter Exams and Registered Court Interpreter Exams collectively.
- U. **“Exam Cycle”** means the administration of oral and written Examinations for both Certified Court Interpreter and Registered Court Interpreter Exams.
- V. **“Exam Item”** means a particular question and its associated answer or acceptable response on an Exam.
- W. **“Exam Materials”** means Exam information packets, the Exam booklet containing questions and/or instructions, answer sheets, worksheets, and related Materials that are distributed to applicants either before or during an Exam and that are collected after administration of an Exam for either Certified Court Interpreter Exams or Registered Court Interpreter Exams. **Exam Materials** are the proprietary property of the State.
- X. **“Force Majeure”** means a delay which impacts the timely performance of Work which neither the Contractor nor the State are liable for because such delay or failure to perform was unforeseeable and beyond the control of the party. Acts of Force Majeure include, but are not limited to:
- i. Acts of God or the public enemy;
 - ii. Acts or omissions of any government entity;
 - iii. Fire or other casualty for which a party is not responsible;
 - iv. Quarantine or epidemic;
 - v. Strike or defensive lockout; and,
 - vi. Unusually severe weather conditions.
- Y. **“Judicial Branch Entity”** has the meaning stated in Government Code sections 900.3 and 940.3: the Supreme Court, the Courts of Appeal, any superior court, the Judicial Council, or the Administrative Office of Courts.

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- Z. **“Judicial Branch Personnel”** means judges, judicial officers, subordinate judicial officers, directors, officers, members, employees, agents, consultants and volunteers of a Judicial Branch Entity.
- AA. **“Judicial Council Court Interpreters Advisory Panel”** is the advisory panel established by the Judicial Council of California to oversee the court interpreters program in California, including the establishment of policy with regard to the certification and registration of court interpreters in the California court system.
- BB. **“Material”** means all types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication technology.
- CC. **“Nondesignated Languages”** means those languages that the State has not designated for the certification program for court interpreters in the California court system.
- DD. **“Norm”** or **“Norming”** means the level of training necessary to achieve and maintain reliability in Rater knowledge and performance.
- EE. **“Notice”** means a written document initiated by the authorized representative of either party to this Agreement and given by:
- i. Depositing in the U. S. Mail (or approved commercial express carrier) prepaid to the address of the appropriate authorized representative of the other party, which shall be effective upon date of receipt; or
 - ii. Hand-delivered to the other party’s authorized representative, which shall be effective on the date of service.
- FF. **“Project”** refers to all activity relative to this Agreement including activity of the Contractor, its Subcontractors, the State and the State’s representatives.
- GG. **“Rater”** means the skilled and experienced individual employed or retained by the Contractor to evaluate the content, accuracy, speed, effectiveness, and reliability of an applicant’s oral interpretation performance. Minimum qualifications of raters include ownership of a post graduate degree with a focus in an applicable area of study and ten years of language-related experience. The process of this evaluation, including applying performance criteria, scoring, and recommendation of certification is called **“Rating.”**

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- HH. **“Rater Panel”** is a team of trained professionals, who meet the minimum qualifications as defined in subsection 2.5.2 of this agreement, that assess applicant performance and provide a comprehensive score based upon a scoring rubric that means previously approved standards by the State.
- II. **“Registered Court Interpreter Examination”** or **“Registered Court Interpreter Exam”** means the oral or written portion or both portions of the test for English fluency in court proceedings that currently serve as part of the assessment and registration by the State of registered court interpreters in the California court system. **Registered Court Interpreter Examinations** or **Registered Court Interpreter Exams** are the proprietary property of the State.
- JJ. **“Staff Employees”** means the Contractor’s regular employed staff who perform services in connection with this Agreement.
- KK. The **“State”** refers to the Judicial Council of California / Administrative Office of the Courts (**“AOC”**).
- LL. **“State Standard Agreement”** or **“Judicial Council of California, Administrative Office of the Courts Standard Agreement”** means the form used by the State to enter into agreements with other parties. Several originally signed, fully executed versions of the State Standard Agreement, together with the integrated Contract Documents, shall each represent the Agreement as an individual **“Contract Counterpart.”**
- MM. **“Stop Work Order”** means the written Notice, delivered in accordance with this Agreement, by which the State may require the Contractor to stop all, or any part, of the Work of this Agreement, for the period set forth in the Stop Work Order. The Stop Work Order shall be specifically identified as such and shall indicate that it is issued pursuant to the Stop Work provision of Exhibit C.
- NN. **“Subcontractor”** shall mean an individual, firm, partnership, or corporation having a contract, purchase order, or agreement with the Contractor, or with any Subcontractor of any tier for the performance of any part of the Agreement. When the State refers to Subcontractor(s) in this document, for purposes of this Agreement and unless otherwise expressly stated, the term **“Subcontractor”** includes, at every level and/or tier, all subcontractors, sub-consultants, suppliers, and materialmen.
- OO. **“Subject Matter Experts”** or **“SME”** means a person retained by the Contractor with a recognized particular expertise in one (1) or more of the following: (i) interpreting a Designated or Non-designated Language; (ii) teaching and/or testing the interpretation skills and abilities of others in a Designated or Non-designated Language; and/or (iii) administering, maintaining and/or developing test materials. SMEs are often Contract Staff, but occasionally, they are employed as Staff

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Employees who have the minimum qualifications as defined in 2.5. of this agreement.

- PP. **“Task(s)”** means one or more functions, if specified in the Contract Documents, to be performed by the Contractor for the State.
- QQ. **“Term”** means the period specified in Section 2 of the Coversheet.
- RR. **“Third Party”** refers to any individual, association, partnership, firm, company, corporation, consultant, Subcontractor, or combination thereof, including joint ventures, other than the State or the Contractor, which is not a party to this Agreement.
- SS. **“Work”** or **“Work to be Performed”** or **“Contract Work”** may be used interchangeably to refer to the service, labor, Materials, Data, and other items necessary for the execution, completion and fulfillment of the Agreement by the Contractor to the satisfaction of the State. Work may be defined to include Tasks, Deliverables, and/or Submittals, as required by the Contract.

END OF EXHIBIT

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EXHIBIT E
ATTACHMENTS

This Exhibit includes the following form(s):

Attachment 1, Acceptance and Signoff Form

END OF EXHIBIT

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**EXHIBIT E
ATTACHMENT 1
ACCEPTANCE AND SIGNOFF FORM**

Description of Work provided by Contractor:

Date submitted: _____

Work is:

1) Submitted on time: yes no. If no, please note length of delay and reasons.

2) Complete: yes no. If no, please identify incomplete aspects of the Work.

3) Technically accurate: yes no. If no, please note corrections required.

Please note level of satisfaction:

Poor Fair Good Very Good Excellent

Comments, if any:

Work is accepted.

Work is unacceptable as noted above.

Name: _____

Title: _____

Date: _____

END OF ATTACHMENT

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SB 78 APPENDIX FOR AGREEMENTS

1. Contractor Certification Clauses

1.1 Representations and Warranties. Contractor or Contractor's representative (Contractor) certifies that the following representations and warranties are true:

(A) *Authority.* Contractor is qualified to do business and in good standing in the State of California. Contractor has authority to enter into and perform its obligations under this Agreement, which constitutes a valid and binding obligation of Contractor.

(B) *Not an Expatriate Corporation.* Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code section 10286.1, and is eligible to contract with the JBE.

(C) *Sales and Use Tax Collection.* Contractor collects and remits sales and use taxes as and to the extent required under the Revenue and Taxation Code.

(D) *No Gratuities.* Contractor has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any member, justice, judicial officer, judge, officer, employee, or agent of a JBE with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning its performance under this Agreement.

(E) *No Conflict of Interest.* Contractor has no interest that would constitute a conflict of interest under Public Contract Code sections 10365.5, 10410, or 10411, which, in general, limit entering into (i) follow-on contracts with a consultant who would benefit thereby from the consultant's advice provided under the first contract, or (ii) contracts with former employees of the JBE; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with certain JBEs.

(F) *No Interference with Other Contracts.* To the best of Contractor's knowledge, this Agreement does not create a material conflict of interest or default under any of Contractor's other contracts.

(G) *No Litigation.* No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or, to Contractor's knowledge, threatened against or affecting Contractor or Contractor's business,

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financial condition, or ability to perform under this Agreement, except any suit, action, arbitration, proceeding, or investigation that individually or in the aggregate with others will not or would not have a material adverse effect on Contractor's business, the validity or enforceability of this Agreement, or Contractor's ability to perform under this Agreement.

(H) *Compliance with Laws Generally.* Contractor complies in all material respects with all laws, rules, and regulations applicable to Contractor's business and services, and pays all undisputed debts when they come due.

(I) *Work Eligibility.* All personnel assigned to perform work under this Agreement are able to work legally in the United States and possess valid proof of work eligibility.

(J) *Union Organizing.* As required under Government Code sections 16645 - 16649, Contractor has not used any funds received from the JBE under this Agreement to assist, promote, or deter union organizing.

(K) *Drug Free Workplace.* Contractor provides a drug-free workplace as required by California Government Code sections 8355 through 8357.

(L) *No Harassment.* Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of this Agreement, and Contractor takes all reasonable steps to prevent harassment from occurring.

(M) *Non-discrimination.* Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California's Fair Employment and Housing Act (Government Code section 12990 et seq.) and associated regulations (Code of Regulations, title 2, section 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor has notified in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor's obligations of non-discrimination.

(N) *Special Provisions regarding Domestic Partners, Spouses, and Gender Discrimination.* If this Agreement provides for total compensation of more than \$100,000, Contractor is in compliance with Public Contract Code section 10295.3, which, subject to specified exceptions, generally prohibits

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discrimination in the provision of benefits between employees with spouses and employees with domestic partners, or discrimination between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex, or discrimination between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees.

(O) Special Provisions regarding Compliance with National Labor Relations Board Orders. If this Agreement provides for making any purchase of goods or services from a private entity, except for a purchase of goods by credit card for an amount less than \$2,500 from any one Contractor (but not to exceed in the aggregate \$7,500 per year from the Contractor), no more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.

(P) Special Provisions regarding Compliance with the Sweatfree Code of Conduct. If this Agreement provides for furnishing equipment, materials, or supplies (except related to the provision of public works), or for the laundering of apparel, garments or corresponding accessories:

- No apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the JBE under this Agreement have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that it adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code section 6108.
- Contractor cooperates fully in providing reasonable access to Contractor's records, documents, agents, and employees, and premises if reasonably required by authorized officials of the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under this section and shall provide the same rights of access to the JBE.

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(Q) Special Provisions regarding Compliance with the Child Support Compliance Act. If this Agreement provides for compensation of \$100,000 or more:

- Contractor recognizes the importance of child and family support obligations and fully complies with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq.; and
- Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

(R) Special Provisions regarding Discharge Violations. If this Agreement provides for the purchase or supplies, goods, or services in exchange for compensation of \$25,000 or more, Contractor is not in violation of any order or resolution not subject to review and promulgated by the State Air Resources Board or an air pollution control district; subject to any cease and desist order not subject to review issued under Water Code section 13301 for violation of waste discharge requirements or discharge prohibitions; a party that has been finally determined to be in violation of provisions of federal law relating to air or water pollution.

(S) Special Provisions regarding the Electronic Waste Recycling Act. If this Agreement provides for the purchase or lease of covered electronic devices under Public Resources Code section 42460 et seq., Contractor complies with the requirements of the Electronic Waste Recycling Act of 2003, and Contractor maintains documentation and provides reasonable access to its records and documents that evidence compliance.

(T) Special Provisions regarding the Use of Postconsumer Material. If this Agreement provides for the purchase and sale of goods specified in Public Contract Code section 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), and the percentage of Contractor's postconsumer material in these goods cannot be verified by reference to a written advertisement, including, for example, a product label, a catalog, or a manufacturer or Contractor website:

- Contractor has delivered a declaration to the JBE specifying the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code section 12200 in goods offered or sold to the JBE, regardless of

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whether the goods meet the requirements of Public Contract Code section 12209.4;

- Under penalty of perjury, the declaration is true and correct and will remain so until Contractor delivers any amendment of the current declaration to the JBE, in which case the current declaration as amended will be true and correct; and
- If Contractor sells under this Agreement any printer or duplication cartridges that comply with Public Contract Code section 12209, Contractor has so specified in the declaration required under this section.

1.2. Covenant as to Representations and Warranties. Contractor shall cause its representations and warranties above to remain true during the term of this Agreement, and Contractor shall promptly notify the JBE if any representation and warranty becomes untrue.

2. Special Provisions for Agreements Providing for the Sale of Recyclable Goods

If this Agreement provides for the sale of goods, regardless of whether the goods are specified in PCC 12207, the JBE shall purchase and Contractor shall sell under this Agreement only recycled products if fitness and quality are equal to non-recycled products and recycled products are available to the JBE at the same or lesser total cost as non-recycled products. In addition, if this Agreement provides for the purchase and sale of goods specified in Public Contract Code section 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), with respect to these goods, Contractor shall use recycled products in the performance of this Agreement to the maximum extent doing so is economically feasible.

3. Special Provisions for Document Printing Agreements

If this Agreement is for printing documents, Contractor shall use only recycled paper, unless the proposed printing job cannot be done on recycled paper. Contractor shall certify in writing under penalty of perjury, upon completion of performance of the Services under this Agreement, the minimum percentage of post-consumer and secondary materials provided or used in the Services.

2. Special Provisions for Janitorial Services and Building Maintenance Agreements

If this is a janitorial services or building maintenance agreement, Contractor shall use paper-containing products only if they contain recycled paper. Upon completion of performance of the Services under this Agreement, Contractor shall certify in writing under penalty of perjury the

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minimum percentage of post-consumer and secondary materials provided or used in the performance of the Services.

If this Agreement requires Contractor to perform Services at a new site, Contractor shall retain for 60 days all employees currently employed at that site by any previous contractor that performed the same services at the site. Contractor shall provide upon request information sufficient to identify employees providing janitorial or building maintenance services at each site and to make the necessary notifications required under Labor Code section 1060 et seq.

4. Special Provisions for Parts-cleaning Agreements

If this Agreement involves parts cleaning, Contractor shall use recycled solvents. Contractor shall certify in writing under penalty of perjury, upon completion of performance of this Agreement, the minimum percentage of post-consumer and secondary materials provided or used in the Services.

3. Special Provisions for Mined Minerals Agreements

If this Agreement involves purchasing mined minerals, Contractor shall not supply through this Agreement any sand, gravel, aggregates, or other minerals a JBE may not purchase under Public Contract Code section 10295.5.

5. Special Provisions for Agreements Providing for Progress Payments

If this Agreement provides for the making of progress payments to Contractor (e.g., in connection with the purchase and sale of any customizable goods), the JBE shall make the progress payments in arrears not more frequently than monthly and only following successful completion of any clearly identifiable project milestones set forth in this Agreement and that Contractor has successfully achieved on the date indicated. The JBE shall withhold an amount of not less than 10 percent from each installment payment pending final completion of all work.

6. Special Provisions for Federally-funded Agreements

If this Agreement is funded in whole or in part by the federal government, then:

- It is mutually understood between the parties that this Agreement may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if this Agreement were executed after that determination was made;
- This Agreement is valid and enforceable only if sufficient funds are made available to the JBE by the United State Government for the fiscal year in which they are due and consistent

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with any stated programmatic purpose. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this Agreement in any manner;

- The parties mutually agree that if the Congress does not appropriate sufficient funds for any program under which this Agreement is intended to be paid, this Agreement shall be deemed amended without any further action of the parties to reflect any reduction in funds.
- The parties may invalidate this Agreement under the termination for convenience or cancellation clause (providing for no more than 30 days' notice of termination or cancellation), or amend this Agreement to reflect any reduction in funds.
- Exemptions from the above requirements may be granted if the JBE can certify in writing that federal funds are available for the term of this Agreement.

7. Special Provisions regarding DVBE Participation Certification

If Contractor made a commitment to achieve disabled veterans business enterprise participation, Contractor shall within 60 days of receiving final payment under this Agreement (or within such other time period as may be specified elsewhere in this Agreement) certify in a report to the JBE: (i) the total amount the prime Contractor received under the Agreement; (ii) the name and address of any disabled veterans business enterprises (DVBE) that participated in the performance of this Agreement; (iii) the amount each DVBE received from the Contractor; (iv) that all payments under this Agreement have been made to the DVBE; and (v) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

8. Special Provisions for Agreements for Equipment, Materials, or Supplies; Loss Leader Prohibition

If this Agreement involves the furnishing of equipment, materials, or supplies, Contractor shall not sell or use any article or product as a "loss leader" as defined in Business and Professions Code section 17030.

9. Special Provisions Applicable to Competitively Bid Agreements; Antitrust Claims

If goods or services under this Agreement were obtained by means of a competitive bid, JBE and Contractor shall comply with the requirements of Government Code sections 4552-4554, which concern the assignment of claims and reimbursement of specified costs regarding the Clayton

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Act (15 U.S.C., sec. 15) and the Cartwright Act (Business and Professions Code, section 16700 et seq.).

10. Special Provisions regarding Ownership of Results

10.1. Special Provisions Applicable to Agreements funded with Grant Funds. If this Agreement provides compensation to Contractor under a project funded through a grant, title to all expendable and non-expendable personal property with a value of \$500 or more purchased with grant funds shall vest automatically and without further action of the parties with the JBE or grantor of funds, effective at the conclusion of the project. Contractor must await specific written instructions from the project manager regarding any transfer of title or disposition. If Contractor provides written certification to the JBE that the property will continue to be used for grant-related purposes and the JBE approves such certification in writing, the JBE may permit title to all such property to remain with Contractor in accordance with the JBE's written instructions.

10.2. Special Provisions Applicable to Certain Agreements for the Purchase of Equipment. Title to equipment purchased or built with JBE funds (as compared to grant funds) vests in the JBE immediately upon payment of the purchase price. Even if the JBE owns the equipment, before delivery of the equipment to the JBE, Contractor is responsible for loss or damage to the equipment to the extent it results from a negligent act or omission of Contractor or its directors, officers, employees, or agents, and Contractor shall make all necessary or appropriate repairs and adjustments. At the JBE's election, the JBE may deduct from any amount payable to Contractor the cost of repair or replacement of damaged, lost, or stolen equipment.

11. Special Provisions for Rental Agreements

If this Agreement provides for rental of personal property, the JBE shall have no responsibility for loss or damage to the rented equipment arising from causes beyond the JBE's control. The JBE is responsible for repairs and liability for damage or loss only to the extent they become necessary and result from a negligent act or omission of the JBE or any judicial branch personnel.

If this Agreement provides for the rental of equipment or other personal property and the JBE has not expressly elected through this Agreement to maintain the equipment or other personal property, Contractor shall keep the equipment in good working order and make all necessary or appropriate repairs and adjustments without qualification.

12. Special Provisions Applicable to Consulting Services Agreements.

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12.1. Agreements of \$1,000 or more. If this Agreement provides for the payment of \$1,000 or more for consulting services, as directed by the JBE, Contractor must deliver detailed performance criteria, a schedule for performance, and progress reports to the JBE to allow the JBE to determine whether Contractor is on the right track and the project is on schedule, to provide communication of interim findings, and to afford opportunities for airing difficulties or special problems encountered so that remedies can be developed quickly.

12.2. Agreements of \$5,000 or more. If this Agreement provides for the payment of \$5,000 or more for consulting services:

- Contractor shall assign to this project only persons who have sufficient training, education, and experience to successfully perform Contractor's duties. If the JBE is dissatisfied with any of Contractor's personnel, for any reason or no reason, Contractor shall replace them with qualified personnel.
- Contractor shall endeavor to minimize turnover of personnel Contractor has assigned to this project. Any additional personnel are subject to approval by the JBE.
- Contractor shall cooperate with the JBE if the JBE wishes to perform any background checks on Contractor's personnel by obtaining, at no additional cost, all releases, waivers, and permissions the JBE may require. Contractor shall not assign personnel who refuse to undergo a background check. Contractor shall provide prompt notice to the JBE of (i) any person who refuses to undergo a background check, and (ii) the results of any background check requested by the JBE and performed by Contractor.
- As directed by the JBE, Contractor shall deliver resumes of each Contractor participant who will exercise a major administrative role or major policy or consultative role.

3.1 Legal Services. If this Agreement provides for the performance of legal services, Contractor shall adhere to any legal cost and billing guidelines, legal budgets, and legal bill or law firm audits as may be required by the JBE. If this Agreement does not provide for legal representation to low- income or middle-income persons in civil, criminal, or administrative matters, Contractor shall also adhere to any litigation plans or case phasing of activities as may be required by the JBE. If this Agreement does not provide for legal representation to low-income or middle-income persons in civil, criminal, or administrative matters, and also provides for Compensation (other than reimbursement of expenses) over \$50,000, Contractor shall also comply with the requirements of Business and Professions Code section 6072, which concerns performance of pro bono legal services.

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13. Special Provisions for Agreements for Certain Services with Compensation over \$200,000

If this is an Agreement for services, other than consulting services, with total compensation over \$200,000, Contractor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with Public Contract Code section 10353.

14. Special Provisions for Agreements Providing for Reimbursement of Costs; Union Activities Certification Requirement

If this Agreement provides for the reimbursement of costs to Contractor, as required under Government Code section 16645.1, Contractor shall include with any request for cost reimbursement from the JBE's funds a certification that the Contractor is not seeking reimbursement for costs incurred to assist, promote, or deter union organizing.

15. Special Provisions for Commercial Office Moving Services Agreements

If this is an agreement of more than \$2,500 with a carrier for commercial office moving services, Contractor shall abide by the requirements contained in the State Administrative Manual, section 3810, regarding collective bargaining agreements, payment of prevailing wages, and standards and conditions of employment.

16. Special Provisions for Elevator Maintenance Agreements.

If this is an elevator maintenance agreement, the Term of this Agreement shall be for a period of no less than five years even if the coversheet specifies a shorter term, subject to the termination provisions in this Agreement.

17. Special Provisions regarding Contractor Insurance

17.1. Coverage Amounts.

(A) *Commercial General Liability.* In addition to any other insurance required under this Agreement, Contractor shall provide and maintain at Contractor's expense Commercial General Liability coverage if this Agreement involves the hazardous activities or any other activity specified in the *Judicial Branch Contracting Manual*, chapter 8, appendix D, section 11. The policy must cover bodily injury and property damage liability, including coverage for the products – completed operations hazard and liability assumed in a contract,

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personal and advertising injury liability, and contractual liability, at minimum limits of \$1 million per occurrence, combined single limit.

(B) *Other Liability.* In addition to any other insurance required under this Agreement, unless waived in writing by the JBE, Contractor shall provide and maintain at Contractor's expense the following additional coverage during the term of this Agreement:

(1)*Workers Compensation and Employer's Liability.* If Contractor has employees, Contractor must maintain workers' compensation coverage to meet minimum requirements of the California Labor Code, and it must provide coverage for employer's liability bodily injury at minimum limits of \$1 million per accident or disease;

(2)*Professional Liability.* If this Agreement involves the furnishing of consulting services or professional services for the direct benefit of the JBE, Contractor must maintain errors and omissions coverage with minimum limits of \$1 million or more per claim, unless the JBE determines the risk of a lower limit is commercially reasonable under the circumstances, but not to be less than \$500,000 per claim or the limit Contractor actually maintains, whichever is greater.

(3)*Commercial Automobile Liability.* If Contractor will use a vehicle in the performance of this Agreement, Contractor must maintain commercial automobile liability coverage covering bodily injury and property damage liability and applicable to all vehicles used in Contractor's performance of this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit.

(4)*Commercial Crime Insurance.* If Contractor performs this Agreement regularly on the JBE's premises, or handles or has regular access to the JBE's funds or property of significant value, Contractor must maintain commercial crime insurance covering dishonest acts including loss due to theft of money, securities, and property; forgery, and alteration of documents; damage to JBE buildings, and property; and fraudulent transfer of money, securities, and property. The minimum liability limit must be approved by the JBE and relate to the value of property at risk.

17.2. "Claims Made" Coverage. If any required insurance is written on a "claims made" form, Contractor shall maintain the coverage continuously throughout the Term, and, without lapse, for three years beyond the termination or expiration of this Agreement and the JBE's

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acceptance of all Services provided under this Agreement. The retroactive date or “prior acts inclusion date” of any “claims made” policy must be no later than the date that Services commence under this Agreement.

17.3. Umbrella Policies. Contractor may satisfy basic coverage limits through any combination of basic coverage and commercial umbrella liability insurance.

17.4. Aggregate Limits of Liability. The basic coverage limits of liability may be subject to annual aggregate limits. If this is the case the annual aggregate limits of liability must be at least two times the limits required for each policy, or the aggregate may equal the limits required but must apply separately to this Agreement.

17.5. Deductibles and Self-Insured Retentions. Contractor shall declare to the JBE all deductibles and self-insured retentions that exceed \$100,000 per occurrence. Any increases in deductibles or self-insured retentions that exceed \$100,000 per occurrence are subject to the JBE’s approval. Deductibles and self-insured retentions do not limit Contractor’s liability.

17.6. Additional Insured Status. Contractor shall require Contractor’s commercial general liability insurer, Contractor’s commercial automobile liability insurer, and, if applicable, Contractor’s commercial umbrella liability insurer to name Judicial Branch Entities and Judicial Branch Personnel⁵ as additional insureds with respect to liability arising out of Contractor’s Services under this Agreement.

17.7. Certificates of Insurance. Before Contractor begin performing Services, Contractor shall give the JBE certificates of insurance attesting to the existence of coverage, and stating that the policies will not be canceled, terminated, or amended to reduce coverage without 30 or more days’ prior written notice to the JBE. Any replacement certificates of insurance are subject to the approval of the JBE, and, without prejudice to the JBE, Contractor shall not perform work before the JBE approves the certificates.

17.8. Qualifying Insurers. For insurance to satisfy the requirements of this section, all required insurance must be issued by an insurer with an A.M. Best rating of A - or better that is approved to do business in the State of California.

17.9. Required Policy Provisions. Each policy must provide, as follows:

(A) *Insurance Primary; Waiver of Subrogation.* The basic coverage provided is primary and non-contributory with any insurance or self-insurance

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maintained by Judicial Branch Entities and Judicial Branch Personnel, and the basic coverage insurer waives any and all rights of subrogation against Judicial Branch Entities and Judicial Branch Personnel; and

(B) Separation of Insureds. The commercial general liability policy, or, if maintained in lieu of that policy, the commercial umbrella liability policy, applies separately to each insured against whom a claim is made and/or a lawsuit is brought, to the limits of the insurer's liability.

17.10. Partnerships. If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either of the following methods:

(A) Separate. Separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or

(B) Joint. Joint insurance program with the association, partnership, or other joint business venture included as a named insured.

17.11. Consequences of Lapse. If required insurance lapses during the Term, the JBE is not required to process invoices after such lapse until Contractor provide evidence of reinstatement that is effective as of the lapse date.

18. Audit and Records

18.1. Audit. Contractor shall allow the JBE's designees and the JBE to review and audit Contractor's documents and records relating to this Agreement, subject only to a lawyer's duty of confidentiality owed to a represented party. Contractor shall correct errors and deficiencies by the 20th day of the month following the review or audit.

18.2. Ownership. The JBE is the exclusive owner of all records and other material collected or produced in connection with Contractor's performance under this Agreement. Upon request at any time, subject only to the duty of confidentiality owed to a represented party, Contractor shall give original materials to the JBE or to another party at the JBE's direction. Contractor shall maintain all other materials in an accessible location and condition for a period of not less than four years after the later of:

- Contractor's receipt of final payment under this Agreement; and
- The JBE's resolution with Contractor of the findings of any final audit.

18.3. Copies. Contractor may retain copies of any original documents Contractor provides to the JBE.

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19. Choice of Law and Jurisdiction

California law, without regard to its choice-of-law provisions, governs this Agreement. Jurisdiction for any legal action arising from this agreement shall exclusively reside in state or federal courts located in California, and the parties hereby consent to the jurisdiction of such courts.

[END OF APPENDIX]