



JUDICIAL COUNCIL OF CALIFORNIA
STANDARD AGREEMENT rev July 2017

AGREEMENT NUMBER
 [@Agreement number]

1. In this agreement (“Agreement”), the term “Service Provider” refers to [@Service Provider name], and the term “Judicial Council” refers to the **Judicial Council of California**.
2. This Agreement is effective as of [@Date] (“Effective Date”) and expires on [@Date] (“Expiration Date”). This Agreement includes one (1) additional period for a one (1) year term (“Option Term(s)”).
3. The total Contract Amount payable to the Contractor by the Judicial Council under this Agreement is [@\$0.00].
4. The purpose of this Agreement is to authorize the Service Provider to answer and route urgent or emergency facility related calls made afterhours to the Judicial Council’s Customer Support Center (“JCC CSC”).

The purpose or title listed above is for administrative reference only and does not define, limit, or construe the scope or extent of this Agreement.
5. The parties agree that this Agreement, made up of this coversheet, the appendixes listed below, and any attachments, contains the parties’ entire understanding related to the subject matter of this Agreement, and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writing and all other communications between the parties.

- Appendix A – Special Provisions
- Appendix B – Payment Provisions
- Appendix C – General Provisions
- Appendix D – Defined Terms
- Appendix E – Pricing Schedule
- Appendix F – Statement of Work

JUDICIAL COUNCIL’S SIGNATURE	SERVICE PROVIDER’S SIGNATURE
Judicial Council of California	SERVICE PROVIDER’S NAME (if Service Provider is not an individual person, state whether Service Provider is a corporation, partnership, etc., and the state or territory where Service Provider is organized) [@Service Provider name]
BY (Authorized Signature) 	BY (Authorized Signature) 
PRINTED NAME AND TITLE OF PERSON SIGNING	PRINTED NAME AND TITLE OF PERSON SIGNING
DATE EXECUTED	DATE EXECUTED
ADDRESS Branch Accounting and Procurement 455 Golden Gate Avenue, 6 th Floor San Francisco, CA 94102-3688	ADDRESS [@Address]

APPENDIX A

SPECIAL PROVISIONS

1. Services.

- 1.1 Description of Services.** Service Provider shall perform the Services or Work specified in Appendix F, statement of work (“SOW”), and as authorized under this Agreement. The dates of performance and schedule of Services or Work will be issued in accordance with this Agreement. Service Provider agrees to provide or perform the Services or Work set forth in this Agreement, as well as any other Services that are necessary, normal, customary, or incidental to the performance of Service Provider’s responsibilities. No provision of any authorized Appendix or Attachment may act to modify or shall conflict with the terms and conditions of this Agreement.
- 1.2 Description of Deliverables.** Service Provider shall deliver to the Judicial Council all work products (“Deliverables”) that are created, developed, produced, delivered, performed or provided by the Service Provider (or any agent, consultant or Subcontractor of Service Provider) to the Judicial Council in connection with the Services or Work performed for the afterhours call center under the Agreement.
- 1.3 Acceptance Criteria.** The Services and Deliverables must meet the following acceptance criteria or the Judicial Council may reject the applicable Services or Deliverables. Subject to written approval, the Judicial Council’s Project Manager will notify Service Provider of the acceptance or rejection of the Services and Deliverables. Service Provider will not be paid for any rejected Services or Deliverables.
- A. Timeliness: The Service or Work was delivered on time;
 - B. Completeness: The Service or Work contained the Data, Materials, and features required to be performed under this Agreement;
 - C. Technical Accuracy: The Service or Work is accurate as measured against commonly accepted practices (i.e. a statistical formula, an industry standard, or de facto marketplace standard), and concepts are presented logically and clearly.
- 1.4 Project Managers.** The Project Manager is an assigned representative or designee of the Judicial Council. The Judicial Council may change its Project Manager at any time upon notice to Service Provider without need for an amendment to this Agreement. Service Provider’s project manager is an assigned representative or designee of the Service Provider. Subject to written approval by the Judicial Council, Service Provider may change its project manager without need for an amendment to this Agreement.
- 1.5 Service Warranties.** Service Provider warrants that: (i) the Services will be rendered with promptness and diligence and will be executed in a workmanlike manner, in accordance with the practices and professional standards used in well-managed operations performing services similar to the Services; and (ii) Service Provider will perform the Services in the most cost-effective manner consistent with the required level of quality and performance. Service Provider warrants that each Deliverable will conform to and perform in accordance with the requirements of this Agreement and all applicable specifications and documentation. For each such Deliverable, the foregoing warranty shall commence for such Deliverable upon the Judicial Council’s acceptance of such Deliverable, and shall continue for a period of one (1) year following acceptance. In the event any Deliverable does not conform to the foregoing warranty, Service Provider shall promptly correct all nonconformities to the satisfaction of the Judicial Council.

- 1.6 Resources.** Service Provider is responsible for providing any and all facilities, materials and resources (including personnel, equipment and software) necessary and appropriate for performance of the Services and to meet Service Provider's obligations under this Agreement.
- 1.7 Commencement of Performance.** This Agreement is of no force and effect until signed by both parties and all Judicial Council-required approvals are secured. Any commencement of performance prior to Agreement approval shall be at Service Provider's own risk.
- 1.8 Stop Work Orders.**
- A. The Judicial Council may, at any time, by Notice to Service Provider, require Service Provider to stop all or any part of the Services for a period up to ninety (90) days after the Notice is delivered to Service Provider, and for any further period to which the parties may agree ("Stop Work Order"). 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, Service Provider shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Services covered by the Stop Work Order during the period of stoppage. Within ninety (90) days after a Stop Work Order is delivered to Service Provider, or within any extension of that period to which the parties shall have agreed, the Judicial Council shall either (i) cancel the Stop Work Order; or (ii) terminate the Services covered by the Stop Work Order as provided for in 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, Service Provider shall resume the performance of Services. The Judicial Council 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 Service Provider's cost properly allocable to the performance of any part of this Agreement; and
 - ii. Service Provider requests an equitable adjustment within thirty (30) days after the end of the period of stoppage; however, if the Judicial Council decides the facts justify the action, the Judicial Council may receive and act upon a proposal submitted at any time before final payment under this Agreement.
 - C. The Judicial Council shall not be liable to Service Provider for loss of profits because of a Stop Work Order issued under this provision.
- 2. Acceptance or Rejection.** All Services and Deliverables are subject to acceptance by the Judicial Council. The Judicial Council may reject any Services or Deliverables that (i) fail to meet applicable acceptance criteria, (ii) are not as warranted, or (iii) are performed or delivered late (without prior consent by the Judicial Council). If the Judicial Council rejects any Service or Deliverable (other than for late performance or delivery), Service Provider shall modify such rejected Service or Deliverable at no expense to the Judicial Council to correct the relevant deficiencies and shall redeliver such Service or Deliverable to the Judicial Council within ten (10) business days after the Judicial Council's rejection, unless otherwise agreed in writing by the Judicial Council. Thereafter, the parties shall repeat the process set forth in this section until the Judicial Council accepts such corrected Service or Deliverable. The Judicial Council may terminate that portion of this Agreement which relates to a rejected Service or Deliverable at no expense to the Judicial Council if the Judicial Council rejects that Service or Deliverable (i) for late performance or delivery, or (ii) on at least two (2) occasions for other deficiencies.

END OF APPENDIX A

APPENDIX B

PAYMENT PROVISIONS

1. **General.** Subject to the terms of this Agreement, Service Provider shall invoice the Judicial Council, and the Judicial Council shall compensate Service Provider, as set forth in this Appendix B. The amounts specified in this Appendix shall be the total and complete compensation to be paid to Service Provider for its performance under this Agreement. Service Provider shall bear, and the Judicial Council shall have no obligation to pay or reimburse Service Provider for, any and all other fees, costs, profits, taxes or expenses of any nature which Service Provider incurs.
2. **Compensation for Services.**
 - 2.1 **Payment.** The Judicial Council will pay each correct, itemized monthly invoice received from the Service Provider after acceptance of the applicable Services and Deliverables, in accordance with the terms of this Agreement. Service Provider shall bear, and the Judicial Council shall have no obligation to pay or reimburse Service Provider for, any and all other fees, costs, profits, taxes or expenses of any nature which Service Provider incurs. Notwithstanding any provision in this Agreement to the contrary, payments to the Service Provider are contingent upon the timely and satisfactory performance of Service Provider's obligations under this Agreement.
 - A. The total authorized amount the Judicial Council may pay to the Service Provider under this Agreement ("Contract Amount") shall not in any event exceed all Total Amounts Encumbered to Date on the Agreement and Amendment Coversheet(s) to the Agreement.
 - B. For performing the Services or Work under this Agreement the Judicial Council shall compensate the Service Provider for the actual cost at the Firm Fixed Price set forth in Appendix E.
 - C. The Firm Fixed Price set forth in Appendix E is inclusive of all costs, benefits, expenses, fees, overhead, and profits payable to the Service Provider for Services or Work rendered to the Judicial Council.
 - D. The Service Provider shall not charge nor shall the Judicial Council pay any overtime rate.
 - E. Service Provider shall not invoice the Judicial Council, and the Judicial Council has no obligation to reimburse Service Provider for expenses of any type that exceed the aggregate amount for Services or Work contracted under this Agreement.
 - 2.2 **Withholding.** When making a payment tied to the acceptance of Deliverables, the Judicial Council shall have the right to withhold ten percent (10%) of each such payment until the Judicial Council accepts the final Deliverable.
 - 2.3 **No Advance Payment.** The Judicial Council will not make any advance payment for Services.
3. **Expenses.**
 - 3.1 **Allowable Expenses.** Service Provider may submit for reimbursement, without mark-up, only the following categories of expenses: None.
 - 3.2 **Limit on Travel Expenses.** If travel expenses are allowed under Section 3.1 above: (i) all travel is subject to written preauthorization and approval by the Judicial Council, and (ii) all travel expenses are limited to the maximum amounts set forth in the Judicial Council's travel expense policy.
 - 3.3 **Expense Limit.** Service Provider shall not invoice the Judicial Council, and the Judicial Council shall not reimburse Service Provider, for expenses of any type that are not authorized under this Agreement.

3.4 Required Certification. Service Provider must include with any request for reimbursement from the Judicial Council a certification that Service Provider is not seeking reimbursement for costs incurred to assist, promote, or deter union organizing. If Service Provider incurs costs or makes expenditures to assist, promote or deter union organizing, Service Provider will maintain records sufficient to show that no reimbursement from the Judicial Council was sought for these costs, and Service Provider will provide those records to the Attorney General upon request.

4. Invoicing.

4.1 Invoicing.

A. Service Provider shall submit invoices to the Judicial Council in arrears no more frequently than monthly. Service Provider's invoices must include information and supporting documentation acceptable to the Judicial Council. Service Provider shall adhere to reasonable billing guidelines issued by the Judicial Council from time to time. Invoices shall clearly indicate the following:

- i. The Agreement number;
- ii. A unique invoice number;
- iii. The Service Provider's name and address;
- iv. Taxpayer identification number (the Service Provider's federal employer identification number);
- v. Description of the completed Work, including services rendered, hours worked, Task(s) performed, and/or Deliverable(s) made, as appropriate;
- vi. The contractual charges, including the appropriate rate(s) or firm fixed prices(s) allowable under this Agreement and
- vii. Preferred remittance address, if different from the mailing address.

B. The Service Provider shall submit one (1) original and two (2) copies of invoices to:

Judicial Council of California
c/o Accounts Payable
455 Golden Gate Avenue, 6th Floor
San Francisco, CA 94102-3688

4.2 No Implied Acceptance. Payment does not imply acceptance of Service Provider's invoice, Services, or Deliverables. Service Provider shall immediately refund any payment made in error. The Judicial Council shall have the right at any time to set off any amount owing from Service Provider to the Judicial Council against any amount payable by the Judicial Council to Service Provider under this Agreement.

5. Taxes. Unless otherwise required by law, the Judicial Council is exempt from federal excise taxes and no payment will be made for any personal property taxes levied on Service Provider or on any taxes levied on employee wages. The Judicial Council shall only pay for any state or local sales, service, use, or similar taxes imposed on the Services rendered or equipment, parts or software supplied to the Judicial Council pursuant to this Agreement.

END OF APPENDIX B

APPENDIX C

GENERAL PROVISIONS

1. Provisions Applicable to Services

- 1.1 Qualifications.** Service Provider shall assign to this project only persons who have sufficient training, education, and experience to successfully perform Service Provider's duties. If the Judicial Council is dissatisfied with any of Service Provider's personnel, for any or no reason, Service Provider shall replace them with qualified personnel.
- 1.2 Turnover.** Service Provider shall endeavor to minimize turnover of personnel that Service Provider has assigned to perform Services.
- 1.3 Background Checks.** Service Provider shall cooperate with the Judicial Council if the Judicial Council wishes to perform any background checks on Service Provider's personnel by obtaining, at no additional cost, all releases, waivers, and permissions the Judicial Council may require. Service Provider shall not assign personnel who refuse to undergo a background check. Service Provider shall provide prompt notice to the Judicial Council of (i) any person who refuses to undergo a background check, and (ii) the results of any background check requested by the Judicial Council and performed by Service Provider. Service Provider shall ensure that the following persons are not assigned to perform services for the Judicial Council: (a) any person refusing to undergo such background checks, and (b) any person whose background check results are unacceptable to Service Provider or that, after disclosure to the Judicial Council, the Judicial Council advises are unacceptable to the Judicial Council.

2. Certification Clauses. Service Provider certifies that the following representations and warranties are true. Service Provider shall cause its representations and warranties to remain true during the Term. Service Provider shall promptly notify the Judicial Council if any representation and warranty becomes untrue. Service Provider represents and warrants as follows:

- 2.1 Authority.** Service Provider has authority to enter into and perform its obligations under this Agreement, and Service Provider's signatory has authority to bind Service Provider to this Agreement.
- 2.2 Not an Expatriate Corporation.** Service Provider is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC 10286.1, and is eligible to contract with the Judicial Council.
- 2.3 No Gratuities.** Service Provider 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.
- 2.4 No Conflict of Interest.** Service Provider has no interest that would constitute a conflict of interest under PCC 10365.5, 10410 or 10411; 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 Judicial Branch Entities.
- 2.5 No Interference with Other Contracts.** To the best of Service Provider's knowledge, this Agreement does not create a material conflict of interest or default under any of Service Provider's other contracts.
- 2.6 No Litigation.** No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect Service Provider's ability to perform the Services.
- 2.7 Compliance with Laws Generally.** Service Provider complies in all material respects with all laws, rules, and regulations applicable to Service Provider's business and services.

- 2.8 Drug Free Workplace.** Service Provider provides a drug free workplace as required by California Government Code sections 8355 through 8357.
- 2.9 No Harassment.** Service Provider does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Service Provider may interact in the performance of this Agreement, and Service Provider takes all reasonable steps to prevent harassment from occurring.
- 2.10 Noninfringement.** The Services and Deliverables, and Service Provider's performance under this Agreement do not infringe, or constitute an infringement, misappropriation or violation of, any third party's intellectual property right.
- 2.11 Nondiscrimination.** Service Provider 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 sections 12990 et seq.) and associated regulations (Code of Regulations, title 2, sections 7285 et seq.). Service Provider 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. Service Provider will notify in writing each labor organization with which Service Provider has a collective bargaining or other agreement of Service Provider's obligations of nondiscrimination.
- 2.12 National Labor Relations Board Orders.** No more than one, final unappealable finding of contempt of court by a federal court has been issued against Service Provider within the immediately preceding two-year period because of Service Provider's failure to comply with an order of a federal court requiring Service Provider to comply with an order of the National Labor Relations Board. Service Provider swears under penalty of perjury that this representation is true.

3. Insurance.

- 3.1 Basic Coverage.** Service Provider shall provide and maintain at the Judicial Council's discretion and Service Provider's expense the following insurance during the Term:
- A. *Commercial General Liability.* The policy must be at least as broad as the Insurance Services Office (ISO) Commercial General Liability "occurrence" form, with coverage for liabilities arising out of premises, operations, independent Service Provider, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. The policy must provide limits of at least \$1,000,000 per occurrence and annual aggregate.
 - B. *Workers Compensation and Employer's Liability.* The policy is required only if Service Provider has employees. The policy must include workers' compensation to meet minimum requirements of the California Labor Code, and it must provide coverage for employer's liability bodily injury at minimum limits of \$1,000,000 per accident or disease.
 - C. *Automobile Liability.* This policy is required only if Service Provider uses an automobile or other vehicle in the performance of this Agreement. The policy must cover bodily injury and property damage liability and be applicable to all vehicles used in Service Provider's performance of this Agreement whether owned, non-owned, leased, or hired. The policy must provide combined single limits of at least \$1,000,000 per occurrence.
 - D. *Professional Liability.* This policy is required only if Service Provider performs professional services under this Agreement. The policy must cover liability resulting from any act, error, or omission committed in Service Provider's performance of Services under this Agreement, at minimum limits of \$1,000,000 per occurrence and annual aggregate. If the policy is written on a "claims made" form, Service Provider shall maintain such

coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the termination and acceptance of all Services provided under this Agreement. The retroactive date or “prior acts inclusion date” of any such “claims made” policy must be no later than the date that activities commence pursuant to this Agreement.

- 3.2 Umbrella Policies.** Service Provider may satisfy basic coverage limits through any combination of basic coverage and umbrella insurance.
 - 3.3 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 (2) times the limits required for each policy, or the aggregate may equal the limits required but must apply separately to this Agreement.
 - 3.4 Deductibles and Self-Insured Retentions.** Service Provider shall declare to the Judicial Council 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 Judicial Council’s approval. Deductibles and self-insured retentions do not limit Service Provider’s liability.
 - 3.5 Additional Insured Endorsements.** Service Provider’s commercial general liability policy, automobile liability policy, and, if applicable, umbrella policy must be endorsed to name the following as additional insureds with respect to liabilities arising out of the performance of this Agreement: the Judicial Council, the State of California, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, Service Provider(ies), volunteers or employees.
 - 3.6 Certificates of Insurance.** Before Service Provider begins performing Services, Service Provider shall give the Judicial Council 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 thirty (30) days’ prior written notice to the Judicial Council.
 - 3.7 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.
 - 3.8 Required Policy Provisions.** Each policy must provide, as follows: (i) the policy is primary and noncontributory with any insurance or self-insurance 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; (ii) the insurance applies separately to each insured against whom a claim is made or a lawsuit is brought, to the limits of the insurer’s liability; and (iii) each insurer waives any right of recovery or subrogation it may have against the Judicial Council, the State of California, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, Service Provider(ies), volunteers or employees for loss or damage.
 - 3.9 Partnerships.** If Service Provider is an association, partnership, or other joint business venture, the basic coverage may be provided by either (i) separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or (ii) joint insurance program with the association, partnership, or other joint business venture included as a named insured.
 - 3.10 Consequence of Lapse.** If required insurance lapses during the Term, the Judicial Council is not required to process invoices after such lapse until Service Provider provides evidence of reinstatement that is effective as of the lapse date.
- 4. Indemnity.** Service Provider will defend (with counsel satisfactory to the Judicial Council or its designee), indemnify and hold harmless the Judicial Branch Entities and the Judicial Branch Personnel against all claims, losses, and expenses, including attorneys’ fees and costs, that arise out of or in connection with (i) a latent or patent defect in any Goods, (ii) an act or omission of Service

Provider, its agents, employees, independent Service Provider, or Subcontractors in the performance of this Agreement, (iii) a breach of a representation, warranty, or other provision of this Agreement, and (iv) infringement of any trade secret, patent, copyright or other third party intellectual property. This indemnity applies regardless of the theory of liability on which a claim is made or a loss occurs. This indemnity will survive the expiration or termination of this Agreement, and acceptance of any Services, or Deliverables. Service Provider shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement which would bind an indemnified party, without the Judicial Council's prior written consent, which consent shall not be unreasonably withheld; and the Judicial Council shall have the right, at its option and expense, to participate in the defense and/or settlement of a claim through counsel of its own choosing. Service Provider's duties of indemnification exclude indemnifying a party for that portion of losses and expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party.

5. **Option Term.** Unless Section 2 of the Coversheet indicates that an Option Term is not applicable, the Judicial Council may, at its sole option, extend this Agreement for one (1) one-year term, at the end of which Option Term of this Agreement shall expire. In order to exercise the Option Term, the Judicial Council must send Notice to Service Provider at least thirty (30) days prior to the end of the Initial Term. The exercise of an Option Term will be effective without Service Provider's signature.
6. **Tax Delinquency.** Service Provider must provide notice to the Judicial Council immediately if Service Provider has reason to believe it may be placed on either (i) the California Franchise Tax Board's list of 500 largest state income tax delinquencies, or (ii) the California Board of Equalization's list of 500 largest delinquent sales and use tax accounts. The Judicial Council may terminate this Agreement immediately "for cause" pursuant to Section 7.2 below if (i) Service Provider fails to provide the notice required above, or (ii) Service Provider is included on either list mentioned above.
7. **Termination**
 - 7.1 **Termination for Convenience.** The Judicial Council may terminate, in whole or in part, this Agreement for convenience upon thirty (30) days prior Notice. After receipt of such Notice, and except as otherwise directed by the Judicial Council, Service Provider shall immediately: (a) stop Services as specified in the Notice; and (b) stop the delivery of Deliverables as specified in the Notice.
 - 7.2 **Termination for Cause.** The Judicial Council may terminate this Agreement, in whole or in part, immediately "for cause" if (i) Service Provider fails or is unable to meet or perform any of its duties under this Agreement, and this failure is not cured within ten (10) days following Notice of default (or in the opinion of the Judicial Council, is not capable of being cured within this cure period); (ii) Service Provider or Service Provider's creditors file a petition as to Service Provider's bankruptcy or insolvency, or Service Provider is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, goes into liquidation or receivership, or otherwise loses legal control of its business; or (iii) Service Provider makes or has made under this Agreement any representation, warranty, or certification that is or was incorrect, inaccurate, or misleading.
 - 7.3 **Termination upon Death.** This entire Agreement will terminate immediately without further action of the parties upon the death of a natural person who is a party to this Agreement, or a general partner of a partnership that is a party to this Agreement.
 - 7.4 **Termination for Changes in Budget or Law.** The Judicial Council's payment obligations under this Agreement are subject to annual appropriation and the availability of funds. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of this Agreement. Funding beyond the current appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement. The Judicial Council may terminate this Agreement or limit Service Provider's Services (and reduce proportionately Service Provider's fees) upon Notice to Service Provider without prejudice to any right or remedy of the Judicial Council if: (i) expected or actual

funding to compensate Service Provider is withdrawn, reduced or limited; or (ii) the Judicial Council determines that Service Provider’s performance under this Agreement has become infeasible due to changes in applicable laws.

7.5 Rights and Remedies of the Judicial Council.

- A. *Nonexclusive Remedies.* All remedies provided in this Agreement may be exercised individually or in combination with any other available remedy. Service Provider shall notify the Judicial Council immediately if Service Provider is in default, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a default under this Agreement. If Service Provider is in default, the Judicial Council may do any of the following: (i) withhold all or any portion of a payment otherwise due to Service Provider, and exercise any other rights of setoff as may be provided in this Agreement or any other agreement between a Judicial Branch Entity and Service Provider; (ii) require Service Provider to enter into nonbinding mediation; (iii) exercise, following Notice, the Judicial Council’s right of early termination of this Agreement as provided herein; and (iv) seek any other remedy available at law or in equity.
- B. *Replacement.* If the Judicial Council terminates this Agreement in whole or in part for cause, the Judicial Council may acquire from third parties, under the terms and in the manner the Judicial Council considers appropriate, services or work equivalent to those terminated, and Service Provider shall be liable to the Judicial Council for any excess costs for those services or work. Notwithstanding any other provision of this Agreement, in no event shall the excess cost to the Judicial Council for such services and work be excluded under this Agreement as indirect, incidental, special, exemplary, punitive or consequential damages of the Judicial Council. Service Provider shall continue any Services not terminated hereunder.
- C. *Delivery of Materials.* In the event of any expiration or termination of this Agreement, Service Provider shall promptly provide the Judicial Council with all originals and copies of the Deliverables, including any partially-completed Deliverables-related work product or materials, and any Judicial Council-provided materials in its possession, custody, or control. In the event of any termination of this Agreement, the Judicial Council shall not be liable to Service Provider for compensation or damages incurred as a result of such termination; provided that if the Judicial Council’s termination is not for cause, the Judicial Council shall pay any fees due under this Agreement for Services performed or Deliverables completed and accepted as of the date of the Judicial Council’s termination Notice.

7.6 Survival. Termination or expiration of this Agreement shall not affect the rights and obligations of the parties which arose prior to any such termination or expiration (unless otherwise provided herein) and such rights and obligations shall survive any such termination or expiration. Rights and obligations which by their nature should survive shall remain in effect after termination or expiration of this Agreement, including any section of this Agreement that states it shall survive such termination or expiration.

8. Assignment and Subcontracting. Service Provider may not assign or subcontract its rights or duties under this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the Judicial Council. Consent may be withheld for any reason or no reason. Any assignment or subcontract made in contravention of the foregoing shall be void and of no effect. Subject to the foregoing, this Agreement will be binding on the parties and their permitted successors and assigns.

9. Notices. Notices must be sent to the following address and recipient:

If to Service Provider:	If to the Judicial Council:
[name, title, address]	Attn: Manager, Contracts Branch Accounting and Procurement

With a copy to:

455 Golden Gate Avenue, 6th Floor
San Francisco, CA 94102-3688

Either party may change its address for Notices by giving the other party Notice of the new address in accordance with this section. Notices will be considered to have been given at the time of actual delivery in person, three (3) days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service.

10. Provisions Applicable to Certain Agreements. The provisions in this section are applicable only to the types of orders specified in the first sentence of each subsection. If this Agreement is not of the type described in the first sentence of a subsection, then that subsection does not apply to the Agreement.

- 10.1 Union Activities Restrictions.** *If the Contract Amount is over \$50,000, this section is applicable.* Service Provider agrees that no Judicial Council funds received under this Agreement will be used to assist, promote or deter union organizing during the Term. If Service Provider incurs costs, or makes expenditures to assist, promote or deter union organizing, Service Provider will maintain records sufficient to show that no Judicial Council funds were used for those expenditures. Service Provider will provide those records to the Attorney General upon request.
- 10.2 Domestic Partners, Spouses, Gender, and Gender Identity Discrimination.** *If the Contract Amount is \$100,000 or more, this section is applicable.* Service Provider is in compliance with, and throughout the Term will remain in compliance with: (i) PCC 10295.3 which places limitations on contracts with Service Provider(ies) who discriminate in the provision of benefits on the basis of marital or domestic partner status; and (ii) PCC 10295.35, which places limitations on contracts with Service Provider(ies) that discriminate in the provision of benefits on the basis of an employee's or dependent's actual or perceived gender identity.
- 10.3 Child Support Compliance Act.** *If the Contract Amount is \$100,000 or more, this section is applicable.* Service Provider recognizes the importance of child and family support obligations and fully complies with (and will continue to comply with during the Term) all applicable state and federal laws relating to child and family support enforcement, including disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq. Service Provider provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- 10.4 Priority Hiring.** *If the Contract Amount is over \$200,000 and this Agreement is for services (other than Consulting Services), this section is applicable.* Service Provider 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 PCC 10353.
- 10.5 Iran Contracting Act.** *If the Contract Amount is over \$1,000,000 or more, this section is applicable.* Service Provider certifies either (i) it is not on the current list of persons engaged in investment activities in Iran ("Iran List") created by the California Department of General Services pursuant to PCC 2203(b), and is not a financial institution extending \$20,000,000 or more in credit to another person, for forty-five (45) days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the Iran List, or (ii) it has received written permission from the Judicial Council to enter into this Agreement pursuant to PCC 2203(c).
- 10.6 DVBE Commitment.** *This section is applicable if Service Provider received a disabled veteran business enterprise ("DVBE") incentive in connection with this Agreement.* Service Provider's failure to meet the DVBE commitment set forth in its bid or proposal constitutes a breach of the Agreement. If Service Provider used DVBE Subcontractor(s) in connection with this Agreement: (i) Service Provider must use the DVBE Subcontractors identified in its bid or proposal, unless the Judicial Council approves in writing replacement by another DVBE Subcontractor in accordance with the terms of this Agreement; and (ii) Service Provider must within sixty (60) days of receiving final payment under this Agreement certify in a report to the

JBE: (1) the total amount of money Service Provider received under the Agreement; (2) the name and address of each DVBE Subcontractor to which Service Provider subcontracted work in connection with the Agreement; (3) the amount each DVBE Subcontractor received from Service Provider in connection with the Agreement; and (4) that all payments under the Agreement have been made to the applicable DVBE Subcontractors. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

10.7 Antitrust Claims. *If this Agreement resulted from a competitive solicitation, this section is applicable.* Service Provider shall assign to the Judicial Council all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by Service Provider for sale to the Judicial Council. Such assignment shall be made and become effective at the time the Judicial Council tenders final payment to Service Provider. If the Judicial Council receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, Service Provider shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the Judicial Council any portion of the recovery, including treble damages, attributable to overcharges that were paid by Service Provider but were not paid by the Judicial Council as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Upon demand in writing by Service Provider, the Judicial Council shall, within one (1) year from such demand, reassign the cause of action assigned under this part if Service Provider has been or may have been injured by the violation of law for which the cause of action arose and (a) the Judicial Council has not been injured thereby, or (b) the Judicial Council declines to file a court action for the cause of action.

10.8 Prevailing Wage. *If this Agreement pertains to public works projects, this section is applicable.* Service Provider certifies that it is aware of the provisions of the California Labor Code, without limitation, section 1720, et seq., section 1770, et seq., and section 1771.1 that require the payment of prevailing wage rates to certain classes of trade labor, the registration of Service Provider(s), Subcontractors and Sub-subcontractors, and other requirements. The Service Provider agrees to fully comply with and to require its Subcontractors to fully comply with all applicable prevailing wage requirements of the California Labor Code.

Service Provider also acknowledges that, for purposes of Labor Code section 1725.5, some of its Services may be a public work to which Labor Code section 1771 applies. That portion of the Services is therefore subject to compliance monitoring and enforcement by the Department of Industrial Relations. Service Provider and its Subcontractors must comply with Labor Code section 1725.5, including without limitation the registration requirements.

- A. If it becomes necessary to employ a craft, classification or type of worker other than those listed on-line at <http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>, the Service Provider shall contact the Division of Labor Statistics and Research to find the appropriate prevailing wage determination. If the Division of Labor Statistics and Research is unable to identify a determination that is applicable, the Service Provider shall notify the Court immediately, and the Court will request a special determination from the Division of Labor Statistics and Research. The rate thus determined shall be applicable from the commencement of the project.
- B. The Service Provider and each Subcontractor shall keep an accurate payroll record showing the names, addresses, social security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Service Provider and/or Subcontractor in connection with the work. Payroll records shall be certified and shall be on forms provided by the Division of Labor Standards Enforcement, or shall contain the same information as those forms. Upon written

request by the Judicial Council, the Service Provider's and Subcontractor's certified payroll records shall be furnished within ten (10) days. The Service Provider's and Subcontractor's certified payroll records shall be available for inspection at the principal office of the Service Provider.

- (1) Service Provider shall pay travel and subsistence payments to persons required to execute the work as travel and subsistence payments are defined in applicable collective bargaining agreements filed with the Department of Industrial Relations, pursuant to Labor Code, Sections 1773.1 and 1773.9.
- (2) Service Provider acknowledges and agrees that, if this Agreement involves a dollar amount or a number of working days greater than those specified in Labor Code section 1777.5, then this Agreement is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of Service Provider to ensure compliance Labor Code section 1777.5 for all apprenticeship occupations.

10.9 Good Standing. Service Provider is, and will remain for the Term, qualified to do business and in good standing in California.

11. Miscellaneous Provisions.

11.1 Independent Entity. Service Provider is an independent Service Provider to the Judicial Council. No employer-employee, partnership, joint venture, or agency relationship exists between Service Provider and the Judicial Council. Service Provider has no authority to bind or incur any obligation on behalf of the Judicial Council. If any governmental entity concludes that Service Provider is not an independent Service Provider, the Judicial Council may terminate this Agreement immediately upon Notice.

11.2 Subcontractors: Subcontractors, if any, engaged by the Service Provider for any Services or Work required to be performed under the Agreement shall be subject to the written approval of the Project Manager. Service Provider agrees to bind every Subcontractor by the terms of the Agreement as far as such terms are applicable to Subcontractor's work, including, without limitation, all indemnification, insurance, and service warranty requirements. If Service Provider subcontracts any part of this Agreement, Service Provider shall be fully responsible to the Judicial Council for acts and omissions of its Subcontractor and of persons either directly or indirectly employed by itself. Nothing contained in the Agreement shall create any contractual relations between any Subcontractor and the Judicial Council.

11.3 Changes and Amendments: Changes or Amendments to any component of the Agreement can only be made with prior written approval from the Judicial Council. 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. Amendments to the Agreement shall be authorized via bilateral execution of a Judicial Council Standard Amendment Form.

11.4 GAAP Compliance. Service Provider maintains an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles.

11.5 Audit. Service Provider must allow the Judicial Council or its designees to review and audit Service Provider's (and any Subcontractors') documents and records relating to this Agreement, and Service Provider (and its Subcontractors) shall retain such documents and records for a period of four (4) years following final payment under this Agreement. If an audit determines that Service Provider (or any Subcontractor) is not in compliance with this Agreement, Service Provider shall correct errors and deficiencies by the twentieth (20th) day of the month following the review or audit. If an audit determines that Service Provider has overcharged the Judicial Council five percent (5%) or more during the time period subject to audit, Service Provider must reimburse the Judicial Council in an amount equal to the cost of

such audit. This Agreement is subject to examinations and audit by the State Auditor for a period three (3) years after final payment.

- 11.6 Licenses and Permits.** Service Provider shall obtain and keep current all necessary licenses, approvals, permits and authorizations required by applicable law for the performance of the Services or Work. Service Provider will be responsible for all fees and taxes associated with obtaining such licenses, approvals, permits and authorizations, and for any fines and penalties arising from its noncompliance with any applicable law.
- 11.7 Confidential Information.** During the Term and at all times thereafter, Service Provider will: (a) hold all Confidential Information in strict trust and confidence, (b) refrain from using or permitting others to use Confidential Information in any manner or for any purpose not expressly permitted by this Agreement, and (c) refrain from disclosing or permitting others to disclose any Confidential Information to any third party without obtaining the Judicial Council's express prior written consent on a case-by-case basis. Service Provider will disclose Confidential Information only to its employees or Service Provider(s) who need to know that information in order to perform Services hereunder and who have executed a confidentiality agreement with Service Provider at least as protective as the provisions of this section. The provisions of this section shall survive the expiration or termination of this Agreement. Service Provider will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Service Provider protects its own confidential or proprietary information of a similar nature, and with no less than the greater of reasonable care and industry-standard care. The Judicial Council owns all right, title and interest in the Confidential Information. Service Provider will notify the Judicial Council promptly upon learning of any unauthorized disclosure or use of Confidential Information and will cooperate fully with the Judicial Council to protect such Confidential Information. Upon the Judicial Council's request and upon any termination or expiration of this Agreement, Service Provider will promptly (a) return to the Judicial Council or, if so directed by the Judicial Council, destroy all Confidential Information (in every form and medium), and (b) certify to the Judicial Council in writing that Service Provider has fully complied with the foregoing obligations. Service Provider acknowledges that there can be no adequate remedy at law for any breach of Service Provider's obligations under this section, that any such breach will likely result in irreparable harm, and that upon any breach or threatened breach of the confidentiality obligations, the Judicial Council shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.
- 11.8 Ownership of Deliverables.** Unless otherwise agreed in this Agreement, Service Provider hereby assigns to the Judicial Council ownership of all Deliverables, any partially-completed Deliverables, and related work product or materials. Service Provider agrees not to assert any rights at common law, or in equity, or establish a copyright claim in any of these materials. Service Provider shall not publish or reproduce any Deliverable in whole or part, in any manner or form, or authorize others to do so, without the written consent of the Judicial Council.
- 11.9 Publicity.** Service Provider shall not make any public announcement or press release about this Agreement without the prior written approval of the Judicial Council.
- 11.10 Choice of Law and Jurisdiction.** California law, without regard to its choice-of-law provisions, governs this Agreement. The parties shall attempt in good faith to resolve informally and promptly any dispute that arises under 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.
- 11.11 Negotiated Agreement.** This Agreement has been arrived at through negotiation between the parties. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code section 1654.
- 11.12 Amendment and Waiver.** Except as otherwise specified in this Agreement, no amendment or change to this Agreement will be effective unless expressly agreed in writing by a duly

authorized officer of the Judicial Council. A waiver of enforcement of any of this Agreement's terms or conditions by the Judicial Council is effective only if expressly agreed in writing by a duly authorized officer of the Judicial Council. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

- 11.13 Force Majeure.** Neither party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by a force majeure. Force majeure, for purposes of this paragraph, is defined as follows: acts of war and acts of god, such as earthquakes, floods, and other natural disasters, such that performance is impossible.
- 11.14 Follow-On Contracting.** No person, firm, or subsidiary who has been awarded a Consulting Services agreement may submit a bid for, nor be awarded an agreement for, the providing of services, procuring goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end-product of this Agreement.
- 11.15 Severability.** If any part of this Agreement is held unenforceable, all other parts remain enforceable.
- 11.16 Headings; Interpretation.** All headings are for reference purposes only and do not affect the interpretation of this Agreement. The word "including" means "including, without limitation." Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days.
- 11.17 Time of the Essence.** Time is of the essence in Service Provider's performance under this Agreement.
- 11.18 Counterparts.** This Agreement may be executed in counterparts, each of which is considered an original.

END OF APPENDIX C

APPENDIX D

DEFINED TERMS

As used in this Agreement, the following terms have the indicated meanings:

“**Agreement**” is defined on the Coversheet.

“**Amendment**” means a written document issued by the Judicial Council and signed by the Service Provider which alters the Agreement, 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.

“**Service Provider**” is defined on the Coversheet.

“**Confidential Information**” means: (i) any information related to the business or operations of the Judicial Council, including information relating to the Judicial Council’s personnel and users; and (ii) all financial, statistical, personal, technical and other data and information of the Judicial Council (and proprietary information of third parties provided to Service Provider) which is designated confidential or proprietary, or that Service Provider otherwise knows, or would reasonably be expected to know, is confidential. Confidential Information does not include information that Service Provider demonstrates to the Judicial Council’s satisfaction that: (a) Service Provider lawfully knew prior to the Judicial Council’s first disclosure to Service Provider, (b) a third party rightfully disclosed to Service Provider free of any confidentiality duties or obligations, or (c) is, or through no fault of Service Provider has become, generally available to the public.

“**Consulting Services**” refers to the services performed under “Consulting Services Agreements,” which are defined in PCC 10335.5, substantially, as contracts that: (i) are of an advisory nature; (ii) provide a recommended course of action or personal expertise; (iii) have an end product that is basically a transmittal of information, either written or oral, that is related to the governmental functions of state agency administration and management and program management or innovation; and (iv) are obtained by awarding a contract, a grant, or any other payment of funds for services of the above type.

“**Contract Amount**” is defined on the Coversheet.

“**Coversheet**” refers to the first page of this Agreement.

“**Deliverables**” is defined in Appendix A.

“**Effective Date**” is defined on the Coversheet.

“**Expiration Date**” is the later of (i) the day so designated on the Coversheet, and (ii) the last day of any Option Term.

“**Initial Term**” is the period commencing on the Effective Date and ending on the Expiration Date designated on the Coversheet.

“**Firm Fixed Price**” means a single fixed amount or amounts designated as payment for a Deliverable or Deliverables. The actual cost of the Firm Fixed Price is set forth in Appendix E.

“**Force Majeure**” means a delay which impacts the timely performance of Services or Work which neither the Service Provider nor the Judicial Council 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.

“**Judicial Council**” is defined on the Coversheet.

“**Judicial Branch Entity**” or “**Judicial Branch Entities**” means any California superior or appellate court, the Judicial Council of California, and the Habeas Corpus Resource Center.

“Judicial Branch Personnel” means members, justices, judges, judicial officers, subordinate judicial officers, employees, and agents of a Judicial Branch Entity.

“Notice” means a written communication from one party to another that is (a) delivered in person, (b) sent by registered or certified mail, or (c) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address and recipient set forth in Appendix C.

“Option Term” means a period, if any, through which this Agreement may be or has been extended by the Judicial Council.

“PCC” refers to the California Public Contract Code.

“Services” is defined in Appendix A.

“Stop Work Order” is defined in Appendix B.

“Subcontractor” shall mean an individual, firm, partnership, or corporation having a contract, purchase order, or agreement with the Service Provider, or with any subcontractor of any tier for the performance of any part of the Agreement. When the Judicial Council 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.

“Task(s)” means one or more functions, if specified in the Agreement, to be performed by the Service Provider for the Judicial Council.

“Term” comprises the Initial Term and any Option Terms.

“Third Party” refers to any individual, association, partnership, firm, company, corporation, consultant, Subcontractor, or combination thereof, including joint ventures, other than the Judicial Council or the Service Provider, which is not a party to this Agreement.

“Work” or **“Work to be Performed”** may be used interchangeably to refer to the service, work, task, labor, Materials, Data, and other items necessary for the execution, completion and fulfillment of the Agreement by the Service Provider to the satisfaction of the Judicial Council. Services or Work may be defined to include Tasks, Deliverables, and/or Submittals, as required by the Agreement.

END OF APPENDIX D

Agreement No. [@Number] with [@Service Provider Name]

APPENDIX E

PRICING SCHEDULE

Reserved for Firm Fixed Price submitted in Service Provider's Proposal

END OF APPENDIX E

SAMPLE

APPENDIX F

STATEMENT OF WORK

Reserved for Statement of Work for urgent or emergency facility related calls made afterhours to the Judicial Council's Customer Support Center ("JCC CSC")

END OF APPENDIX F

SAMPLE