

EXHIBIT 2
STANDARD PROVISIONS

APPENDIX A
Goods and Services

1. Background, Purpose, and Ordering.

- 1.1** This Master Agreement (“Agreement”) sets forth the terms and conditions that apply to Contractor’s provision of Work to the PARTICIPATING JBEs. “Work” shall mean the Goods, Services, and Deliverables as further described in Sections 2 and 3 below. This Agreement *does not obligate a JBE to place any orders for Work* under this Agreement, and does not guarantee Contractor a specific volume of orders.
- 1.2** Each JBE shall have the right to place orders under this Agreement for any of the Work. A PARTICIPATING JBE may place orders for Work by entering into a Participating Addendum with Contractor in the form attached as Appendix E to this Agreement (“Participating Addendum”). Pricing for Work shall be in accordance with the prices set forth in this Agreement. After a Participating Addendum has been presented to the Contractor by a PARTICIPATING JBE, the Contractor shall acknowledge, sign, and perform under the Participating Addendum in a timely manner. Contractor shall provide the Work for each PARTICIPATING JBE in accordance with the terms of this Agreement and the applicable Participating Addendum.
- 1.3** Each Participating Addendum constitutes and shall be construed as a separate, independent contract between Contractor and the PARTICIPATING JBE signing such Participating Addendum, subject to the following:
- (i) Each Participating Addendum shall be governed by this Agreement, and the terms in this Agreement are hereby incorporated into each Participating Addendum;
 - (ii) The Participating Addendum *may not alter or conflict* with the terms of this Agreement, or exceed the scope of the Work provided for in this Agreement; and
 - (iii) The term of the Participating Addendum may not extend beyond the expiration date of the Agreement.

The Participating Addendum and this Agreement shall take precedence over any terms and conditions included on Contractor’s invoice or similar document. Contractor shall notify the ESTABLISHING JBE within five (5) business days of receipt of a Participating Addendum from a Participating Entity. The Contractor shall promptly provide the ESTABLISHING JBE with a fully-signed copy of each Participating Addendum between the Contractor and a Participating Entity.

- 1.4** Under a Participating Addendum, the PARTICIPATING JBE may at its option place orders for the Goods using a purchase order, subject to the following: such purchase order

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is subject to and governed by the terms of the Master Agreement and the Participating Addendum, and any term in the purchase order that conflicts with or alters any term of the Master Agreement (or the Participating Addendum) or exceeds the scope of the Work provided for in this Agreement, will not be deemed part of the contract between Contractor and PARTICIPATING JBE. Subject to the foregoing, the Participating Addendum shall be deemed to include such purchase orders.

- 1.5** The PARTICIPATING JBE signing the Participating Addendum shall be solely responsible for: (i) the acceptance of and payment for the Work under such Participating Addendum; and (ii) its obligations and any breach of its obligations. Any breach of obligations by a PARTICIPATING JBE shall not be deemed a breach by any other PARTICIPATING JBE. Under no circumstances shall a PARTICIPATING JBE have any liability or obligation except pursuant to a Participating Addendum signed by such PARTICIPATING JBE, nor shall any breach by a PARTICIPATING JBE under a Participating Addendum give rise to a breach under any other Participating Addendum or be deemed grounds for termination of this Agreement by Contractor. The ESTABLISHING JBE shall have no liability or responsibility of any type related to: (i) any other PARTICIPATING JBE's use of or procurement through this Agreement (including any Participating Addendum), or (ii) such PARTICIPATING JBE's business relationship with Contractor. The ESTABLISHING JBE makes no guarantees, representations, or warranties to any PARTICIPATING JBE.
- 1.6** This Agreement is a *nonexclusive* agreement. Each PARTICIPATING JBE reserves the right to provide, or have others provide the Work. Contractor shall reasonably cooperate with any third parties retained by a PARTICIPATING JBE to provide the Work.

2. Services.

- 2.1 Description of Services.** As ordered by each PARTICIPATING JBE under a Participating Addendum, Contractor shall perform the following services ("Services") for the PARTICIPATING JBEs:

MINIMUM SPECIFIC PAYROLL FUNCTIONS TO BE PROVIDED

Minimum specific payroll functions to be provided, but not limited to:

- A. Multiple user-defined earnings codes (Pay types).
- B. The ability to locally print a manual check or a special payroll check.
- C. The ability to modify the information appearing on employee paycheck stubs.
- D. The ability to pay an employee at more than one rate.
- E. The option to set a "Final Check" indicator for terminated employees to prevent issuance of additional checks after termination.
- F. The ability to pay employees on a variety of pay schedules (currently, bi-weekly, semi-monthly and monthly).
- G. The ability to calculate and pay miscellaneous vendor deductions such as benefits, union dues, retirement, and etc.
- H. The functionality to easily produce standard and ad hoc payroll reports.

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- I. The ability to supply comprehensive, up-to-date payroll user documentation, both functional and technical.
- J. The option to preview and change a payroll prior to final processing.
- K. Group Term Life and excess life calculation.
- L. The ability to process pre-tax and post-tax deductions.
- M. Retroactive payments.
- N. The ability to track FMLA and CFRA.
- O. The ability to process a variety of leave types, including accrual and non-accrual.
- P. The ability to track and process Donated Leave.
- Q. The ability to track and calculate Holiday Time, Overtime, CTO, PTO, Bank Time, and Furlough.
- R. The ability to make mass changes to earnings and deductions amounts and rates by bargaining unit or by other user-defined criteria.
- S. Direct deposit capabilities (multiple accounts).
- T. The ability to track and report employee garnishments and the history of garnishments.
- U. The ability to manage flex-spending accounts.
- V. The ability to manually adjust taxable earnings for W-2 processing.
- W. Deferred Compensation.
- X. Retirement deductions (PERS).
- Y. Reimbursements, both taxable and non-taxable.
- Z. Moving allowance when required.
- AA. Car and phone allowance when required.
- BB. System ability to accept both on-line and batch input.
- CC. The ability to split employee earnings between multiple cost assignments (cost centers, functional areas, programs, and funds).
- DD. The ability to track multiple anniversary dates (for leave accrual rate changes).
- EE. The ability to populate W-2 Box 12 DD Cost of Employer- Sponsored Health Coverage.
- FF. The ability to produce all year-end payroll reports, including W-2's.

PROPOSED METHOD TO COMPLETE THE WORK

The JUDICIAL COUNCIL expects the successful Payroll Service Provider(s) to have the ability to perform the following services, including but not limited to:

- A. Payroll processing services for a number of California trial court locations, ranging in size from small (5 employees) to large (5000 employees).
- B. The ability to print and deliver paychecks to each Participating JBE location.
- C. The ability to interface payroll data to a Financial and/or Human Resources system (e.g., SAP, PeopleSoft, Lawson, Oracle).
- D. The ability to download payroll data into a spreadsheet and/or an external database (e.g., MS Excel, MS Access).
- E. The ability to report all state and federal payroll taxes.
- F. Complete "hands on" functional training to payroll system users.

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- G. New hire reporting to the State of California (both paper and electronic).
- H. The ability to provide an electronic timekeeping & attendance solution.
- I. The expertise to manage the Unemployment Compensation process.
- J. The option to access and process payroll through the Internet using a standard Web browser with maximum Internet security.
- K. The option to implement an integrated (or interfaced) Human Resources Information System.
- L. The ability to interface payroll data with Third Party Vendors (e.g., CalPERS, County Retirements, deferred compensation, Health benefits enrollments).
- M. The expertise to manage the Cobra Process.
- N. The ability to generate new Federal and State reports, including Third Party Sick Pay Recap (IRS Form 8922), Affordable Care Act (IRS Forms 1094-B, 1095-B, 1094-C, and/or 1095-C) and reporting, and Government Compensation in California (GCC).
- O. Ability to implement any new California state or federal requirements as needed.

2.2 Description of Deliverables. As ordered by each PARTICIPATING JBE under a Participating Addendum, Contractor shall deliver to the PARTICIPATING JBEs the following work products (“Deliverables”):

Deliverable No.	Description
1	Process payroll for a number of California trial court locations ranging in size from small (5 employees) to large (5000 employees).
2	Print and deliver paychecks to each Participating JBE location.
3	Interface payroll data to a Financial and/or Human Resources system (e.g., SAP, PeopleSoft, Lawson, and Oracle).
4	Download payroll data into a spreadsheet and/or an external database (e.g., MS Excel, MS Access).
5	Report all state and federal payroll taxes.
6	“Hands on” functional training to payroll system users.
7	Report new hires to State of California (both paper and electronic).
8	Provide an electronic timekeeping & attendance solution.
9	Manage the Unemployment Compensation process.
10	Access and process payroll through the Internet using a standard Web browser with maximum Internet security.

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11	Option to implement an integrated (or interfaced) Human Resources Information System.
12	Interface payroll data with Third Party Vendors (e.g., CalPERS, County Retirements, deferred compensation, health benefits enrollment).
13	Manage COBRA process.
14	Generate new Federal and State reports, including Third Party Sick Pay Recap (IRS Form 8922), Affordable Care Act (IRS Forms 1094-B, 1095-B, 1094-C, and/or 1095-C) and reporting, and Government Compensation in California (GCC).
15	Implement any new California state or federal requirements as needed.
16	Multiple user-defined earnings codes (Pay types).
17	Can locally print a manual check or a special payroll check.
18	Modify the information appearing on employee paycheck stubs.
19	Pay an employee at more than one rate.
20	Set a "Final Check" indicator for terminated employees to prevent issuance of additional checks after termination.
21	Pay employees on a variety of pay schedules (currently, bi-weekly, semi-monthly and monthly).
22	Calculate and pay miscellaneous vendor deductions such as benefits, union dues, retirement, and etc.
23	Produce standard and ad hoc payroll reports easily.
24	Supply comprehensive, up-to-date payroll user documentation, both functional and technical.
25	Preview and change a payroll prior to final processing.
26	Calculate Group Term Life and excess life.
27	Process pre-tax and post-tax deductions.
28	Make retroactive payments.
29	Track FMLA and CFRA.
30	Process a variety of leave types, including accrual and non-accrual.
31	Track and process Donated Leave.
32	Track and calculate Holiday Time, Overtime, CTO, PTO, Bank Time, and Furlough.
33	Make mass changes to earnings and deductions amounts and rates by bargaining unit or by other user-defined criteria.
34	Make direct deposit to multiple accounts.
35	Track and report employee garnishments and the history of garnishments.
36	Manage flex-spending accounts.

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37	Manually adjust taxable earnings for W-2 processing.
38	Calculate and process Deferred Compensation.
39	Process Retirement deductions (PERS).
40	Moving allowance when required.
41	Process Car and phone allowance as needed.
42	System ability to accept both on-line and batch input.
43	Split employee earnings between multiple cost assignments (cost centers, functional areas, programs, and funds).
44	Track multiple anniversary dates (for leave accrual rate changes).
45	Populate W-2 Box 12 DD Cost of Employer- Sponsored Health Coverage.
46	Produce all year-end payroll reports, including W-2s.
47	Vendor must operate in a secured access and a controlled environment.
48	Solution must use the most up to date secure authentication solution.
49	Solution must require minimal local information technology (IT) support.
50	Vendor must be able to provide all technical support.
51	Data back-up using a, multifaceted disaster recovery model.
52	Vendor must provide a separate environment for testing so that live data is not manipulated.
53	Conduct an onsite study with the Participating JBE staff (HR, IT, and Finance) to identify needs with respect to organizational and functional processes and system/hardware requirements (for each Participating JBE location, as required).
54	Assist in achieving a smooth transition from the existing payroll system to the new system (i.e., a transition that could occupy a minimum amount of Participating JBE staff time and resources).
55	Provide the needed levels of security for data input, and for processing and accessing payroll information for management and staff.
56	Maintain stable customer support to promote ongoing vendor familiarity with the trial court's unique payroll requirements.
57	Successfully complete, to the satisfaction of the Participating JBE, a parallel or offline payroll run(s) prior to a "Live" payroll.
58	Provide information regarding ability to manage and support the implementation process.

2.3 Acceptance Criteria. The Services and Deliverables must meet the following acceptance criteria or the PARTICIPATING JBE may reject the applicable Services or Deliverables.

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The PARTICIPATING JBE may use the attached Acceptance and Signoff Form to notify Contractor of the acceptance or rejection of the Services and Deliverables. Contractor will not be paid for any rejected Services or Deliverables.

- 2.4 Timeline.** Contractor must perform the Services and deliver the Deliverables according to the timeline established by the Participating JBE
- 2.6 Project Managers.** Each PARTICIPATING JBE may designate a project manager. The ESTABLISHING JBE's project manager is: **TBD**. A PARTICIPATING JBE may change its project manager at any time upon notice to Contractor without need for an amendment to this Agreement. Contractor's project manager is: **TBD**. Subject to written approval by the ESTABLISHING JBE, Contractor may change its project manager without need for an amendment to this Agreement.
- 2.7 Service Warranties.** Contractor warrants to the PARTICIPATING JBEs 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) Contractor will perform the Services in the most cost-effective manner consistent with the required level of quality and performance. Contractor warrants that each Deliverable and the Services will conform to the requirements of this Agreement and all applicable specifications and documentation. The foregoing warranty shall commence upon the PARTICIPATING JBE's acceptance of such Deliverable or Service, and shall continue for a period of one (1) year following acceptance. In the event any Deliverable or Service does not conform to the foregoing warranty, Contractor shall promptly correct all nonconformities to the satisfaction of the PARTICIPATING JBE.
- 2.8 Resources.** Contractor is responsible for providing any and all facilities, materials and resources (*including personnel, equipment, tools and software*) necessary and appropriate for performance of the Services and to meet Contractor's obligations under this Agreement.
- 2.9 Commencement of Performance.** This Agreement is of no force and effect until signed by both parties and ESTABLISHING JBE-required approvals are secured. Any commencement of performance prior to Agreement approval (and approval by a PARTICIPATING JBE of a Participating Addendum) shall be at Contractor's own risk.
- 3.0 Stop Work Orders.**
- A.** Each PARTICIPATING JBE may, at any time, by Notice to Contractor, require Contractor to stop all or any part of the Work being provided to such PARTICIPATING JBE for a period up to ninety (90) days after the Notice is delivered to Contractor, and for any further period to which the PARTICIPATING JBE and the Contractor 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, 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 stoppage. Within ninety (90) days after a Stop Work Order is delivered to Contractor, or within any

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extension of that period to which the parties shall have agreed, the PARTICIPATING JBE shall either (i) cancel the Stop Work Order; or (ii) terminate the Work 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, Contractor shall resume the performance of the Work. The PARTICIPATING JBE shall make an equitable adjustment in the delivery schedule and the Participating Addendum shall be modified, in writing, accordingly, if:

 - i. The Stop Work Order results in an increase in the time required for performance of any part of the Participating Addendum; and
 - ii. Contractor requests an equitable adjustment within thirty (30) days after the end of the period of stoppage.
 - C.** The PARTICIPATING JBEs shall not be liable to Contractor for loss of profits because of a Stop Work Order issued under this provision.
- 3. Acceptance or Rejection.** All Goods, Services, and Deliverables are subject to acceptance by each PARTICIPATING JBE. The PARTICIPATING JBE may reject any Goods, Services or Deliverables that (i) fail to meet applicable requirements or specifications, including acceptance criteria, (ii) are not as warranted, or (iii) are performed or delivered late (without prior consent by the PARTICIPATING JBE). If the PARTICIPATING JBE rejects any Good, Service, or Deliverable (other than for late performance or delivery), Contractor shall modify such rejected Good, Service, or Deliverable at no expense to the PARTICIPATING JBE to correct the relevant deficiencies and shall redeliver such Good, Service, or Deliverable to the PARTICIPATING JBE within ten (10) business days after the PARTICIPATING JBE's rejection, unless otherwise agreed in writing by the PARTICIPATING JBE. Thereafter, the parties shall repeat the process set forth in this section until the PARTICIPATING JBE accepts such corrected Good, Service, or Deliverable. The PARTICIPATING JBE may terminate the portion of the Participating Addendum that relates to a rejected Good, Service, or Deliverable at no expense to the PARTICIPATING JBE if the PARTICIPATING JBE rejects that Good, Service, or Deliverable (i) for late performance or delivery, or (ii) on at least two (2) occasions for other deficiencies.

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**ATTACHMENT 1
ACCEPTANCE AND SIGNOFF FORM**

Description of Services or Deliverables provided by Contractor:

Date submitted to the PARTICIPATING JBE: _____

The Services or Deliverables are:

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 Services or Deliverables.

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:

The Services or Deliverables listed above are accepted.

The Services or Deliverables listed above are rejected.

Name: _____

Title: _____

Name of PARTICIPATING JBE: _____

Date: _____

END OF ATTACHMENT

APPENDIX B
Payment Provisions

- 1. General.** Subject to the terms of this Agreement, Contractor shall invoice the PARTICIPATING JBE, and the PARTICIPATING JBE shall compensate Contractor, as set forth in this Appendix B. The amounts specified in this Appendix shall be the total and complete compensation to be paid to Contractor for its performance under this Agreement. Contractor shall bear, and the PARTICIPATING JBE shall have no obligation to pay or reimburse Contractor for, any and all other fees, costs, profits, taxes or expenses of any nature that Contractor incurs.
- 2. Compensation for Services.**
 - 3.1 Amount.** Contractor will invoice the amounts for Services or Deliverables that the PARTICIPATING JBE will be accepting.
 - 3.2 Withholding.** When making a payment tied to the acceptance of Deliverables, the PARTICIPATING JBE shall have the right to *withhold fifteen percent (15%)* of each such payment until the PARTICIPATING JBE accepts the final Deliverable.
 - 3.3 No Advance Payment.** The PARTICIPATING JBEs will not make any advance payments.
- 3. Expenses.** Except as set forth in this section, no expenses relating to the Goods, Services, and Deliverables shall be reimbursed by the PARTICIPATING JBEs.
 - 3.1 Allowable Expenses.** Contractor may submit for reimbursement, without mark-up, only the following categories of expense: **TBD**
 - 3.2 Limit on Travel Expenses.** If travel expenses are allowed under Section 4.1 above: (i) all travel is subject to written preauthorization and approval by the PARTICIPATING JBE, and (ii) all travel expenses are limited to any maximum amounts set forth in the Participating Addendum or the PARTICIPATING JBE's travel expense policy.
 - 3.3 Required Certification.** Contractor must include with any request for reimbursement from the PARTICIPATING JBE a certification that Contractor is not seeking reimbursement for costs incurred to assist, promote, or deter union organizing. If Contractor incurs costs or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from the PARTICIPATING JBE was sought for these costs, and Contractor will provide those records to the Attorney General upon request.
- 5. Invoicing and Payment**
 - 5.1 Invoicing.** Contractor shall submit invoices to the PARTICIPATING JBE in arrears *no more frequently than monthly*. Contractor's invoices must include information and supporting documentation acceptable to the PARTICIPATING JBE. Contractor shall

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adhere to reasonable billing guidelines issued by the PARTICIPATING JBE from time to time.

- 5.2 Payment.** The PARTICIPATING JBE will pay each correct, itemized invoice received from Contractor after acceptance of the applicable Goods, Services, or Deliverables, in accordance with the terms of this Agreement and the applicable Participating Addendum. Notwithstanding any provision to the contrary, payments to Contractor are contingent upon the timely and satisfactory performance of Contractor's obligations.
- 5.3 No Implied Acceptance.** Payment does not imply acceptance of Contractor's invoice, Goods, Services, or Deliverables. Contractor shall immediately refund any payment made in error. The PARTICIPATING JBE shall have the right at any time to set off any amount owing from Contractor to the PARTICIPATING JBE against any amount payable by the PARTICIPATING JBE to Contractor under this Agreement.
- 6. Taxes.** Unless otherwise required by law, the PARTICIPATING JBE is exempt from federal excise taxes and no payment will be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The PARTICIPATING JBE 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 PARTICIPATING JBE pursuant to this Agreement.

APPENDIX C

General Provisions

1. Provisions Applicable to Services

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

2. Contractor Certification Clauses.

Contractor certifies to the PARTICIPATING JBEs that the following representations and warranties, which shall apply to this Agreement and any Participating Addendum, are true. Contractor shall cause its representations and warranties to remain true during the Term. Contractor shall promptly notify the PARTICIPATING JBEs if any representation and warranty becomes untrue. Contractor represents and warrants as follows:

- 2.1 **Authority.** Contractor has authority to enter into and perform its obligations under this Agreement and any Participating Addendum, and Contractor's signatory has authority to bind Contractor to this Agreement and any Participating Addendum.
- 2.2 **Not an Expatriate Corporation.** Contractor 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 PARTICIPATING JBEs.
- 2.3 **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 any Participating Addendum) or securing

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favorable treatment with respect to any determinations concerning the performance of this Agreement (or any Participating Addendum).

- 2.4 No Conflict of Interest.** Contractor has no interest that would constitute a conflict of interest under PCC sections 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 Contractor's knowledge, this Agreement and any Participating Addendum does not create a material conflict of interest or default under any of Contractor'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 Contractor's ability to perform its obligations.
- 2.7 Compliance with Laws Generally.** Contractor complies with all laws, rules, and regulations applicable to Contractor's business and its obligations under this Agreement and any Participating Addendum.
- 2.8 Drug Free Workplace.** Contractor provides a drug free workplace as required by California Government Code sections 8355 through 8357.
- 2.9 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 any Participating Addendum), and Contractor takes all reasonable steps to prevent harassment from occurring.
- 2.10 Noninfringement.** The Goods, Services, Deliverables, and Contractor's performance under this Agreement (and any Participating Addendum) do not infringe, or constitute an infringement, misappropriation or violation of, any third party's intellectual property right.
- 2.11 Nondiscrimination.** 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 sections 12990 et seq.) and associated regulations (Code of Regulations, title 2, sections 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 will notify in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor'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 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

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Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.

3. Insurance

3.1 Basic Coverage. Contractor shall provide to each PARTICIPATING JBE and maintain at the Contractor'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 contractors, 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 Contractor 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 Contractor 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 Contractor'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 Contractor performs professional services under this Agreement. The policy must cover liability resulting from any act, error, or omission committed in Contractor'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, Contractor 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.
- E. *Commercial Crime Insurance.* This policy is required only if Contractor handles or has regular access to a PARTICIPATING JBE's funds or property of significant value to the PARTICIPATING JBE. This policy must cover dishonest acts including loss due to theft of money, securities, and property; forgery, and alteration of documents; and fraudulent transfer of money, securities, and property. The minimum liability limit must be \$1,000,000.00.

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

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- 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.** Contractor shall declare to each PARTICIPATING 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 each PARTICIPATING JBE's approval. Deductibles and self-insured retentions do not limit Contractor's liability.
- 3.5 Additional Insured Endorsements.** Contractor'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 Establishing PARTICIPATING JBE, the State of California, the Participating Entities, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees).
- 3.6 Certificates of Insurance.** Before Contractor begins performing Services, Contractor shall give the ESTABLISHING JBE (and on request, any Participating Entity) 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 ESTABLISHING JBE and any Participating Entity.
- 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 ESTABLISHING JBE, any Participating Entity, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees for loss or damage.
- 3.9 Partnerships.** If Contractor 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.

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- 3.10 Consequence of Lapse.** If required insurance lapses during the Term, the PARTICIPATING JBEs are not required to process invoices after such lapse until Contractor provides evidence of reinstatement that is effective as of the lapse date.
- 4. Indemnity.** Contractor will defend (with counsel satisfactory to the PARTICIPATING JBE 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 Contractor, its agents, employees, independent contractors, or subcontractors in the performance of this Agreement; (iii) a breach of a representation, warranty, or other provision of this Agreement or any Participating Addendum; 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 or any Participating Addendum, and acceptance of any Goods, Services, or Deliverables. Contractor shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement that would bind an indemnified party, without the affected PARTICIPATING JBE's prior written consent, which consent shall not be unreasonably withheld; and such PARTICIPATING JBE 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. Contractor'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 ESTABLISHING JBE may, at its sole option, extend this Agreement for a single one-year term, at the end of which Option Term this Agreement shall expire. In order to exercise this Option Term, the ESTABLISHING JBE must send Notice to Contractor at least thirty (30) days prior to the end of the Initial Term. The exercise of an Option Term will be effective without Contractor's signature.
- 6. Tax Delinquency.** Contractor must provide notice to the PARTICIPATING JBEs immediately if Contractor 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 ESTABLISHING JBE may terminate this Agreement immediately "for cause" pursuant to Section 7.2 below (and each PARTICIPATING JBE may terminate its Participating Addendum immediately "for cause" pursuant to Section 7.2 below) if (i) Contractor fails to provide the notice required above, or (ii) Contractor is included on either list mentioned above.
- 7. Termination**
- 7.1 Termination for Convenience.** The ESTABLISHING JBE may terminate, in whole or in part, this Agreement (and a PARTICIPATING JBE may terminate, in whole or in part, a Participating Addendum) for convenience upon thirty (30) days prior Notice. After receipt of such Notice, and except as otherwise directed by the ESTABLISHING JBE (and regarding a Participating Addendum, except as otherwise directed by the PARTICIPATING JBE), Contractor shall immediately: (a) stop Services (or

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development of Deliverables) as specified in the Notice; and (b) stop the delivery or manufacture of Goods as specified in the Notice.

- 7.2 Termination for Cause.** The ESTABLISHING JBE may terminate this Agreement, in whole or in part, immediately “for cause” (and a PARTICIPATING JBE may terminate a Participating Addendum, in whole or in part, immediately “for cause”): if (i) Contractor fails or is unable to meet or perform any of its duties under this Agreement or a Participating Addendum, and this failure is not cured within ten (10) days following Notice of default (or in the opinion of the PARTICIPATING JBE, is not capable of being cured within this cure period); (ii) Contractor or Contractor’s creditors file a petition as to Contractor’s bankruptcy or insolvency, or Contractor 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) Contractor makes or has made under this Agreement (or any Participating Addendum) 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.** Each PARTICIPATING JBE’s payment obligations 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 or Participating Addendum. Funding beyond the current appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement (including a Participating Addendum). The ESTABLISHING JBE may terminate this Agreement (and any PARTICIPATING JBE may terminate a Participating Addendum), and each PARTICIPATING JBE may limit Contractor’s Work (and reduce proportionately Contractor’s fees) upon Notice to Contractor without prejudice to any right or remedy of the PARTICIPATING JBEs if: (i) expected or actual funding to compensate Contractor is withdrawn, reduced or limited; or (ii) the ESTABLISHING JBE determines that Contractor’s performance under this Agreement (or a PARTICIPATING JBE determines that Contractor’s performance under a Participating Addendum) has become infeasible due to changes in applicable laws.
- 7.5 Rights and Remedies.**
- A. *Nonexclusive Remedies.*** All remedies provided in this Agreement may be exercised individually or in combination with any other available remedy. Contractor shall notify the ESTABLISHING JBE and the affected Participating Entities immediately if Contractor 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 (or a Participating Addendum). If Contractor is in default: (i) a PARTICIPATING JBE may withhold all or any portion of a payment otherwise due to Contractor, and exercise any other rights of setoff as may be provided in this Agreement; (ii) a PARTICIPATING JBE may require Contractor to enter into nonbinding mediation; (iii) the ESTABLISHING JBE may exercise, following Notice, the

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ESTABLISHING JBE's right of early termination of this Agreement (and a PARTICIPATING JBE may exercise its right of early termination of a Participating Addendum) as provided herein; and (iv) a PARTICIPATING JBE may seek any other remedy available at law or in equity.

- B. *Replacement.* If the ESTABLISHING JBE terminates this Agreement (or if a PARTICIPATING JBE terminates a Participating Addendum) in whole or in part for cause, the PARTICIPATING JBE may acquire from third parties, under the terms and in the manner the PARTICIPATING JBE considers appropriate, goods or services equivalent to those terminated, and Contractor shall be liable to the PARTICIPATING JBE for any excess costs for those goods or services. Notwithstanding any other provision, in no event shall the excess cost to the PARTICIPATING JBEs for such goods and services be excluded as indirect, incidental, special, exemplary, punitive or consequential damages of the PARTICIPATING JBEs. Contractor shall continue any Work not terminated.
- C. *Delivery of Materials.* In the event of any expiration or termination of this Agreement (or a Participating Addendum), Contractor shall promptly provide the applicable PARTICIPATING JBE or PARTICIPATING JBEs with all originals and copies of the Deliverables for such PARTICIPATING JBE, including any partially-completed Deliverables-related work product or materials, and any PARTICIPATING JBE-provided materials in its possession, custody, or control. In the event of any termination of this Agreement or Participating Addendum, the PARTICIPATING JBEs shall not be liable to Contractor for compensation or damages incurred as a result of such termination.
- D. *Participating Addenda.* The termination of this Agreement shall not result in the termination of any outstanding Participating Addendum that has not been terminated by a PARTICIPATING JBE, and this Agreement shall continue to apply to any such Participating Addendum until such time as all Work under such Participating Addendum has been completed by its terms or is terminated as provided in this Section 7; provided, however, that the term of such Participating Addendum may not exceed the expiration date of this Agreement. Issuance and acknowledgement of any Participating Addendum (as evidenced by the PARTICIPATING JBE's and Contractor's signature on the Participating Addendum) must be completed before the termination or expiration of this Agreement.

7.6 Survival. Termination or expiration of this Agreement shall not affect the rights and obligations of Contractor, the ESTABLISHING JBE, and the Participating Entities 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 that 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.** Contractor may not assign or subcontract its rights or duties under this Agreement (including any Participating Addendum), in whole or in part, whether by operation of law or otherwise, without the prior written consent of the

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ESTABLISHING JBE. 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 Contractor:	If to the ESTABLISHING JBE:
<u>[name, title, address]</u>	<u>[name, title, address]</u>
<u>TBD</u>	<u>TBD</u>
<u>With a copy to:</u>	<u>With a copy to:</u>

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 to this Agreement and to any Participating Addendum, provided, however that if this Agreement or a Participating Addendum is not of the type described in the first sentence of a subsection, then that subsection does not apply to this Agreement or such Participating Addendum.

10.1 Union Activities Restrictions. *If the Contract Amount is over \$50,000, this section is applicable.* Contractor agrees that no PARTICIPATING JBE funds received under this Agreement or any Participating Addendum will be used to assist, promote or deter union organizing during the Term. If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no PARTICIPATING JBE funds were used for those expenditures. Contractor 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.* Contractor is in compliance with, and throughout the Term will remain in compliance with: (i) PCC 10295.3, which places limitations on contracts with contractors 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 contractors 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.* Contractor 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. Contractor provides the names of all new

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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.* 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 PCC 10353.
- 10.5 Iran Contracting Act.** *If the Contract Amount is \$1,000,000 or more and Contractor did not provide to the ESTABLISHING JBE an Iran Contracting Act certification as part of the solicitation process, this section is applicable.* Contractor 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 ESTABLISHING JBE to enter into this Agreement (and written permission from each PARTICIPATING JBE to enter into the applicable Participating Addendum) pursuant to PCC 2203(c).
- 10.6 Federal Funding Requirements.** *If this Agreement (or a Participating Addendum) is funded in whole or in part by the federal government, this section is applicable.* It is mutually understood between the parties that this Agreement (or a Participating Addendum) may have been written for the mutual benefit of both parties (or Participating Entities) before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if this Agreement (or a Participating Addendum) were executed after that determination was made. This Agreement (or a Participating Addendum) is valid and enforceable only if sufficient funds are made available to the ESTABLISHING JBE (or the applicable Participating Entity) by the United States Government for the fiscal year in which they are due and consistent with any stated programmatic purpose, and this Agreement (or a Participating Addendum) 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 (or a Participating Addendum) in any manner. The parties mutually agree that if the Congress does not appropriate sufficient funds for any program under which this Agreement (or a Participating Addendum) is intended to be paid, this Agreement (or Participating Addendum) shall be deemed amended without any further action of the parties to reflect any reduction in funds. The ESTABLISHING JBE may invalidate this Agreement (and a PARTICIPATING JBE may invalidate a Participating Addendum) under the termination for convenience or cancellation clause (providing for no more than thirty (30) days’ Notice of termination or cancellation), or amend this Agreement (or Participating Addendum) to reflect any reduction in funds.
- 10.7 DVBE Commitment.** This section is applicable if Contractor received a disabled veteran business enterprise (“DVBE”) incentive in connection with this Agreement. Contractor’s failure to meet the DVBE commitment set forth in its bid or proposal

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constitutes a breach of the Agreement. If Contractor used DVBE subcontractor(s) in connection with this Agreement (or a Participating Addendum): (i) Contractor must use the DVBE subcontractors identified in its bid or proposal, unless the ESTABLISHING JBE approves in writing replacement by another DVBE subcontractor in accordance with the terms of this Agreement; and (ii) Contractor must, within sixty (60) days of receiving final payment under each Participating Addendum, certify in a report to the applicable PARTICIPATING JBE: (1) the total amount of money Contractor received under the Participating Addendum; (2) the name and address of each DVBE subcontractor to which Contractor subcontracted work in connection with the Participating Addendum; (3) the amount each DVBE subcontractor received from Contractor in connection with the Participating Addendum; and (4) that all payments under the Participating Addendum 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.

10.8 Antitrust Claims. *If this Agreement resulted from a competitive solicitation, this section is applicable.* Contractor shall assign to the applicable PARTICIPATING JBE 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 Contractor for sale to the PARTICIPATING JBE. Such assignment shall be made and become effective at the time the PARTICIPATING JBE tenders final payment to Contractor. If the PARTICIPATING JBE receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the PARTICIPATING JBE any portion of the recovery, including treble damages, attributable to overcharges that were paid by Contractor but were not paid by the PARTICIPATING JBE as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Upon demand in writing by Contractor, the PARTICIPATING JBE shall, within one (1) year from such demand, reassign the cause of action assigned under this part if Contractor has been or may have been injured by the violation of law for which the cause of action arose and (a) the PARTICIPATING JBE has not been injured thereby, or (b) the PARTICIPATING JBE declines to file a court action for the cause of action.

10.9 Good Standing. *If Contractor is a corporation, limited liability company, or limited partnership, and this Agreement (and any Participating Addendum) is performed in whole or in part in California, this section is applicable.* Contractor is, and will remain for the Term, qualified to do business and in good standing in California.

10.10 Equipment Purchases. *If this Agreement (or any Participating Addendum) includes the purchase of equipment, this section is applicable.* The PARTICIPATING JBE may, at its option, repair any damaged or replace any lost or stolen items and deduct the cost thereof from Contractor's invoice to the PARTICIPATING JBE, or require Contractor to repair or replace any damaged, lost, or stolen equipment to the satisfaction of the

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PARTICIPATING JBE at no expense to the PARTICIPATING JBE. If a theft occurs, Contractor must file a police report immediately.

10.11 Four-Digit Date Compliance. *If this Agreement (or any Participating Addendum) includes the purchase of systems, software, or instrumentation with imbedded chips, this section is applicable.* Contractor represents and warrants that it will provide only Four-Digit Date Compliant deliverables and services to the PARTICIPATING JBEs. “Four-Digit Date Compliant” deliverables and services can accurately process, calculate, compare, and sequence date data, including date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Agreement and does not limit the generality of warranty obligations set forth elsewhere in this Agreement or any Participating Addendum.

10.12 Small Business Preference Commitment. This section is applicable if Contractor received a small business preference in connection with this Agreement. Contractor’s failure to meet the small business commitment set forth in its bid or proposal constitutes a breach of this Agreement (and any Participating Addendum). Contractor must within sixty (60) days of receiving final payment under this Agreement (and any Participating Addendum) report to the PARTICIPATING JBE the actual percentage of small/micro business participation that was achieved. If Contractor is a nonprofit veteran service agency (“NVSA”), Contractor must employ veterans receiving services from the NVSA for not less than seventy-five percent (75%) of the person-hours of direct labor required for the production of goods and the provision of services performed pursuant to this Agreement (and any Participating Addendum).

11. Miscellaneous Provisions.

11.1 Independent Contractor. Contractor is an independent contractor to the PARTICIPATING JBEs. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor and the PARTICIPATING JBEs. Contractor has no authority to bind or incur any obligation on behalf of the PARTICIPATING JBEs. If any governmental entity concludes that Contractor is not an independent contractor, the Establishing PARTICIPATING JBE may terminate this Agreement (and a PARTICIPATING JBE may terminate a Participating Addendum) immediately upon notice.

11.2 GAAP Compliance. Contractor shall maintain an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles.

11.3 Audit. Contractor must allow the PARTICIPATING JBEs or their designees to review and audit Contractor’s (and any subcontractors’) documents and records relating to this Agreement (including any Participating Addendum), and Contractor (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 Contractor (or any subcontractor) is not in compliance with this Agreement (including any Participating Addendum), Contractor shall correct errors and deficiencies by the twentieth (20th) day

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of the month following the review or audit. If an audit determines that Contractor has overcharged the PARTICIPATING JBE five percent (5%) or more during the time period subject to audit, Contractor must reimburse the PARTICIPATING JBE in an amount equal to the cost of such audit. This Agreement (and any Participating Addendums) are subject to examinations and audit by the State Auditor for a period of three (3) years after final payment.

11.4 Licenses and Permits. Contractor shall obtain and keep current all necessary licenses, approvals, permits and authorizations required by applicable law for the performance of the Services (including Deliverables) or the delivery of the Goods. *Contractor 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.*

11.5 Confidential Information. During the Term and at all times thereafter, Contractor 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 PARTICIPATING JBE's express prior written consent on a case-by-case basis. Contractor will disclose Confidential Information only to its employees or contractors who need to know that information in order to perform Services hereunder and who have executed a confidentiality agreement with Contractor at least as protective as the provisions of this section. The provisions of this section shall survive the expiration or termination of this Agreement and any Participating Addendum. Contractor will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Contractor 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. Each PARTICIPATING JBE owns all right, title and interest in its Confidential Information. Contractor will notify the affected PARTICIPATING JBE promptly upon learning of any unauthorized disclosure or use of Confidential Information and will cooperate fully with the PARTICIPATING JBE to protect such Confidential Information. Upon a PARTICIPATING JBE's request and upon any termination or expiration of this Agreement or a Participating Addendum, Contractor will promptly (a) return to the PARTICIPATING JBE or, if so directed by the PARTICIPATING JBE, destroy all such PARTICIPATING JBE's Confidential Information (in every form and medium), and (b) certify to the PARTICIPATING JBE in writing that Contractor has fully complied with the foregoing obligations. Contractor acknowledges that there can be no adequate remedy at law for any breach of Contractor'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 PARTICIPATING JBEs shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.

11.6 Ownership of Deliverables. Unless otherwise agreed in this Agreement, regarding any Deliverables or any other work product to be provided to a PARTICIPATING JBE, Contractor hereby assigns to such PARTICIPATING JBE all rights, title, and interest

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(and all intellectual property rights, including but not limited to copyrights) in and to such Deliverables and work product, any partially-completed Deliverables, and related materials. Contractor agrees not to assert any rights at common law, or in equity, or establish a copyright claim in any of these materials. Contractor shall not publish or reproduce any Deliverable or other work product in whole or part, in any manner or form, or authorize others to do so, without the written consent of the PARTICIPATING JBE.

- 11.7 Publicity.** Contractor shall not make any public announcement or press release about this Agreement (or any Participating Addendum) without the prior written approval of the ESTABLISHING JBE (and with respect to any Participating Addendum, the prior written approval of the applicable PARTICIPATING JBE).
- 11.8 Choice of Law and Jurisdiction.** California law, without regard to its choice-of-law provisions, governs this Agreement (including any Participating Addendum). The Contractor and the applicable PARTICIPATING JBEs shall attempt in good faith to resolve informally and promptly any dispute that arises. 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.
- 11.9 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.
- 11.10 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 ESTABLISHING JBE. A waiver of enforcement of any of this Agreement's terms or conditions by the ESTABLISHING JBE is effective only if expressly agreed in writing by a duly authorized officer of the ESTABLISHING JBE. Any waiver or failure by a PARTICIPATING JBE to enforce any provision of this Agreement or Participating Addendum on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
- 11.11 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.
- 11.12 Severability.** If any part of this Agreement is held unenforceable, all other parts remain enforceable.
- 11.13 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.
- 11.14 Time of the Essence.** Time is of the essence in Contractor's performance under this Agreement.

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

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APPENDIX D

Defined Terms

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

“Agreement” is defined on the Coversheet.

“Contractor” is defined on the Coversheet.

“Confidential Information” means: (i) any information related to the business or operations of each PARTICIPATING JBE, including information relating to its personnel and users; and (ii) all financial, statistical, personal, technical and other data and information of each PARTICIPATING JBE (and proprietary information of third parties provided to Contractor) which is designated confidential or proprietary, or that Contractor otherwise knows, or would reasonably be expected to know, is confidential. Confidential Information does not include information that Contractor demonstrates to the PARTICIPATING JBEs’ satisfaction that: (a) Contractor lawfully knew prior to the PARTICIPATING JBE’s first disclosure to Contractor, (b) a third party rightfully disclosed to Contractor free of any confidentiality duties or obligations, or (c) is, or through no fault of Contractor 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” means the contract amount of any Participating Addendum.

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

“Deliverables” is defined in Appendix A.

“Effective Date” is defined on the Coversheet.

“Establishing JBE” 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.

“Goods” is defined in Appendix A.

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

“JBEs” and **“JBE”** are defined on the Coversheet.

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

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“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 ESTABLISHING JBE.

“Participating Addendum” is defined in Appendix A.

“Participating JBE/Entities” and **“Participating Entity”** are defined on the Coversheet.

“PCC” refers to the California Public Contract Code.

“Services” is defined in Appendix A.

“Stop Work Order” is defined in Appendix B.

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

“Work” is defined in Appendix A.

APPENDIX E

Participating Addendum

- (1) This Participating Addendum is made and entered into as of _____ (“Participating Addendum Effective Date”) by and between the _____ *[add full name of the PARTICIPATING JBE]* (“PARTICIPATING JBE”) and _____ (“Contractor”) pursuant to the Master Agreement # _____ *[add Master Agreement # - see cover page]* (“Master Agreement”) dated _____, 20__ *[add Effective Date of the Master Agreement]* between the *[add name of the ESTABLISHING JBE that established the Master Agreement]* (“Establishing JBE”) and Contractor. Unless otherwise specifically defined in this Participating Addendum, each capitalized term used in this Participating Addendum shall have the meaning set forth in the Master Agreement.
- (2) This Participating Addendum constitutes and shall be construed as a separate, independent contract between Contractor and the PARTICIPATING JBE, subject to the following: (i) this Participating Addendum shall be governed by the Master Agreement, and the terms in the Master Agreement are hereby incorporated into this Participating Addendum; (ii) the Participating Addendum (including any purchase order documents pursuant to the Participating Addendum) may not alter or conflict with the terms of the Master Agreement, or exceed the scope of the Work provided for in the Master Agreement; and (iii) the term of the Participating Addendum may not extend beyond the expiration date of the Master Agreement. The Participating Addendum and the Master Agreement shall take precedence over any terms and conditions included on Contractor’s invoice or similar document.
- (3) Under this Participating Addendum, the PARTICIPATING JBE may at its option place orders for the Goods using a purchase order, subject to the following: such purchase order is subject to and governed by the terms of the Master Agreement and the Participating Addendum, and any term in the purchase order that conflicts with or alters any term of the Master Agreement (or the Participating Addendum) or exceeds the scope of the Work provided for in this Agreement, will not be deemed part of the contract between Contractor and PARTICIPATING JBE. Subject to the foregoing, this Participating Addendum shall be deemed to include such purchase orders.
- (4) The PARTICIPATING JBE is solely responsible for the acceptance of and payment for the Work under this Participating Addendum. The PARTICIPATING JBE shall be solely responsible for its obligations and any breach of its obligations. Any breach of obligations by the PARTICIPATING JBE shall not be deemed a breach by the Establishing JBE or any other Participating Entity. The Establishing JBE shall have no liability or responsibility of any type related to: (i) the PARTICIPATING JBE’s use of or procurement through the Master Agreement (including this Participating Addendum), or (ii) the PARTICIPATING JBE’s business relationship with Contractor. The Establishing JBE makes no guarantees, representations, or warranties to any Participating Entity.
- (5) Pricing for the Work shall be in accordance with the prices set forth in the Master Agreement.

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- (6) The term of this Participating Addendum shall be from the Effective Date until: [_____ – may not exceed the term of the Master Agreement].
- (7) The PARTICIPATING JBE hereby orders, and Contractor hereby agrees to provide, the following Work:
- *Options for ordering, including description of the Goods, Services and/or Deliverables.*
 - *Options for: service levels, quantity, model #s, delivery dates, pricing, etc.*
- (8) Any notices must be sent to the following address and recipient:

If to Contractor:	If to the PARTICIPATING JBE:
<u>[name, title, address]</u>	<u>[name, title, address]</u>
TBD	TBD
<u>With a copy to:</u>	<u>With a copy to:</u>

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.

- (9) This Participating Addendum and the incorporated documents and provisions (including the terms of the Master Agreement) constitute the entire agreement between the parties and supersede any and all prior understandings and agreements, oral or written, relating to the subject matter of this Participating Addendum.

IN WITNESS WHEREOF, PARTICIPATING JBE and Contractor have caused this Participating Addendum to be executed on the Participating Addendum Effective Date.

[PARTICIPATING JBE]

[CONTRACTOR]

By: _____

By: _____

Name:

Name:

Title:

Title: