

RFP Title: Enterprise Document Management Services
RFP #: IT-DMS-2016-01-MDS

APPENDIX H
Standard Terms and Conditions

EXHIBIT 1

DEFINITIONS

1. **Agreement:** entire integrated agreement, including all contract documents, Exhibits, Attachments, and Amendments incorporated therein, signed by JCC and Contractor, for performance of the Work.
2. **Amendment:** written contract document issued by JCC, and signed by both Contractor and JCC, modifying the Agreement and identifying any of the following: (1) change in the Work; (2) change in Contract Amount; (3) change in schedule for delivery and performance of Work; or (4) any change to other terms and conditions.
3. **Appropriation Year:** authorized period of time for government spending for a defined purpose. The Appropriation Year for state-funded agreements ends on June 30th of each year.
4. **Confidential Information:** (i) any financial, statistical, personal, technical, or other data or information that is designated confidential by a party to this Agreement, (ii) all information related to the business of the JBE that may be obtained orally, in writing, or from any source, or on any JBE mainframe, JBE or judicial branch computer network or workstation, and all software, whether owned or licensed by JBE and whether accessed by Contractor by direct or remote access method, (iii) any information relating to the methods, processes, financial data, lists, apparatus, statistics, programs, research, development, or related information of the JBE concerning the past, present, or future official business and/or the results of the provision of services to the JBE, and (iv) information relating to JBE personnel and JBE users. Confidential Information does not include: (i) information that is already known by the receiving party, free of obligation of confidentiality to the disclosing party; (ii) information generally and lawfully available to the public, other than as a result of disclosure by the receiving party in breach of this Agreement; (iii) information independently developed by the receiving party without reference to the Confidential Information; and (iv) information that the receiving party rightfully obtains from a Third Party free of the obligation of confidentiality to the disclosing party.
5. **Contract Amount:** total dollar amount of this Agreement.
6. **Contractor:** individual or entity, contracting with JCC to do the agreed Work and supply any Deliverable under this Agreement. Contractor is a party to this Agreement.
7. **Data:** information, including, but not limited to, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.
8. **Deliverable(s):** hardware, Licensed Software, third party software, firmware, documentation, services or other items, specified in the Agreement, that Contractor shall

complete and deliver or submit to the JBEs.

9. **Documentation:** (i) all documentation published by Contractor for the Licensed Software, and (ii) all technical architecture documents, technical manuals, user manuals, flow diagrams, operations guides, file descriptions, training materials and other documentation related to the Deliverables; together with all Upgrades thereto.

10. **Judicial Branch Entity (“JBE”):** (i) the JCC, and (ii) any California Court of Appeal, including the Supreme Court of California. Except for the JCC, which is a party to this Agreement, each of the other JBEs is an intended third party beneficiary of this Agreement.

11. **JCC:** the Judicial Council of California.

12. **Licensed Software:** Contractor’s commercially available Software applications set forth in Exhibit 3 (Licensed Software and Additional Terms), together with all Upgrades thereto.

13. **Maintenance:** enhancements, upgrades and new releases of the Licensed Software (including without limitation those updates required to allow the Licensed Software to operate properly under new releases of the operating system or database platform), which Contractor agrees to provide the JBEs under the provisions of Section 4 of Exhibit 2 (General Terms and Conditions) and Exhibit 9 (Maintenance and Support).

14. **Maintenance Release(s):** those modules, improvements, enhancements, upgrades or extensions to the Licensed Software as more particularly defined in Exhibit 9 (Maintenance and Support).

15. **Material(s):** all types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication hardware and software.

16. **Notice:** written document signed by an authorized representative of either party to this Agreement, providing formal notification and sent by either: (1) depositing in the U.S. Mail or commercial express mail, prepaid, to the address of the authorized representative of the other party. Notice will be effective on the post-marked date; or (2) hand-delivery to the other party’s authorized representative, as set forth in this Agreement. This Notice shall be effective on the date of receipt.

17. **PCC:** California Public Contract Code.

18. **Project Lead:** Contractor’s representative who will operate as the main interface with the JCC regarding the Work to be performed under this Agreement.

19. **Project Manager:** JCC representative who will operate as the main interface between Contractor and the JCC regarding the Work to be performed under this Agreement.

20. **Source Code:** the source language code of the Licensed Software as the same is written

by the programmers thereof.

21. **Specifications:** collectively (i) the functional specifications for the Licensed Software, as such functional specifications may be developed and revised from time to time, and (ii) the additional specifications required by a JCC to be implemented in addition to the specifications for the Licensed Software. Specifications include, without limitation, the technical specifications for the Licensed Software as established in the Documentation accompanying the Licensed Software. The Specifications in effect as of the Effective Date of this Agreement are set forth in Exhibit 4 (Specifications).

22. **Stop Work Order:** written notice to Contractor from JCC, directing Contractor to stop performance of Work for a period of ninety (90) days following delivery of the order to Contractor, or for a longer period by mutual agreement of the parties.

23. **Subcontractor:** a person or business entity that has a contract (as an independent contractor and not an employee) with Contractor to provide some portion of the Work of this Agreement.

24. **Support Services:** those services required to support or maintain the Licensed Software, in accordance with the terms of Section 4 of Exhibit 2 (General Terms and Conditions) and Exhibit 9 (Maintenance and Support).

25. **Task:** one or more functions, services, or actions, as specified in this Agreement, to be performed by Contractor for the JCC

26. **Third Party:** any individual or entity not a party to this Agreement.

27. **Transition:** Contractor assistance services necessary to ensure the smooth transition of the Maintenance and Support Services performed by Contractor or Contractor's subcontractor to the JCC or its designee, in the event of termination of this Agreement.

28. **Upgrades:** means all new versions, bug fixes, error-corrections, workarounds, patches and new releases of Licensed Software and/or Documentation.

29. **Work:** any or all labor, services, Deliverables, training, equipment, supplies, Materials, Tasks, and any other items or activities necessary for the performance and completion of Contractor's obligations in compliance with the requirements of this Agreement. Work may also include Tasks, Deliverables, and/or submittals required by individual work order(s).

END OF EXHIBIT 1

EXHIBIT 2

GENERAL TERMS AND CONDITIONS

1. Scope of Work; Acceptance; Prior Work.

A. Scope of Work; Statement of Work. Contractor will perform and complete all Work described in Exhibit 5 (Statement of Work), including any schedules and attachments thereto, in compliance with the requirements of this Agreement, and to the satisfaction of JCC. The Statement of Work shall include:

- a) requirements to perform the Work;
- b) any projected milestone schedule for the completion of the services or deliverables under the schedule;
- c) any acceptance criteria for deliverables under the applicable schedule;
- d) the personnel to be assigned to perform the services, along with their job classification, if applicable;
- e) if applicable to a particular deliverable or milestone, the anticipated number of hours to be expended by each such person in the performance of the services under the Statement of Work, along with the applicable hourly rate or fee for such personnel, as specified in the Service and Contractor Personnel Rates and Charges Table of Exhibit 7 (Fees, Pricing and Payment Terms);
- f) the projected maximum fees and expenses (the "Maximum Fees"), inclusive of all costs for labor and materials, along with any additional reimbursable expenses or other charges as required to provide the services and complete all deliverables set forth in the schedule;
- g) the name of Contractor's Project Lead, if applicable; along with such additional information, terms and conditions as the parties may agree upon and wish to include; and
- h) a draft project plan that addresses the scope and detail of services to be performed.

B. Acceptance.

B.1. All Work and Deliverables provided by Contractor under this Agreement are subject to written acknowledgement and acceptance by JCC's Project Manager. The JCC's Project Manager will apply the acceptance criteria set forth in Exhibit 5 (Statement of Work), (including timeliness, completeness, technical accuracy

and conformance to statistical, industry or marketplace standards) to determine acceptance or non-acceptance of the Work.

B.2. JCC's Project Manager shall use the Acceptance and Sign-off Form, in the form provided on Exhibit 6 (Acceptance and Sign-Off Form) to notify the Contractor of acceptance or non-acceptance.

B.3. If the Work is not acceptable, JCC's Project Manager shall detail its failure to meet the acceptance criteria. Contractor shall have ten business days from receipt of Acceptance and Sign-Off Form to correct the failure(s) to conform to the acceptance criteria. Contractor will re-submit the Work and the Project Manager shall re-apply the acceptance criteria to determine its acceptance or non- acceptance. Thereafter, the parties shall repeat the process set forth in this Section 1.B.3 until Contractor's receipt of JCC's written acceptance of such corrected Work; provided, however, that if JCC rejects any Work on at least two (2) occasions, JCC may terminate that portion of this Agreement which relates to the rejected Work at no expense to JCC.

B.4. If the JCC rejects any services or Work after payment to Contractor, the JCC may exercise all contractual and other legal remedies, including (i) setting off the overpayment against future invoices payable by the JCC, (ii) setting off the overpayment against any other amount payable for the benefit of Contractor pursuant to this Agreement or otherwise, and (iii) requiring Contractor to refund the overpayment within thirty (30) days of the JCC's request.

C. Prior Work. Prior work, performed by Contractor pursuant to JCC's authorization, but before execution of this Agreement, will be considered as having been performed subject to the provisions of this Agreement.

D. Non-Exclusivity. This is a non-exclusive agreement. JCC reserves the right to perform, or have others perform the Work of this Agreement. JCC reserves the right to bid the Work to others or procure the Work by other means.

2. Changes in Work; Stop Work.

A. Changes in Work.

A.1. JCC reserves the right to require Contractor to make changes in the Work, as set forth in Exhibit 5 (Statement of Work), which may include additions, deletions, or modifications to the Work, or changes in the timing or level of effort for the Work.

A.2. For any change proposed by JCC or Contractor, Contractor will submit in writing:

- a) a description of the proposed change and the reasons for the change;

b) a summary of the total compensation to be paid Contractor with a breakdown of tasks and costs, including any reduction in work or costs resulting from the change; and

c) a statement of the expected impact on schedule.

A.3. If JCC and Contractor agree on a change, JCC will issue an Amendment documenting the change, for the parties' execution.

A.4. If the parties cannot agree to the terms of a change, Contractor will proceed diligently with Work unless otherwise directed by JCC, and any continuing disagreement will follow the process set forth in the provisions entitled "Dispute Resolution." Contractor should not proceed with any change prior to receiving a written directive or Amendment from JCC. All costs for changes performed by Contractor without JCC's prior written approval will be at Contractor's sole risk and expense.

B. Stop Work.

B.1. JCC may, at any time, by delivery of a written Stop Work Order to Contractor, require Contractor to stop any or all of the Work, for ninety days after the Stop Work Order is delivered to Contractor, and for any further period to which the parties may agree.

B.2. Upon receipt of the Stop Work Order, Contractor will immediately comply with its terms and take all reasonable steps to minimize the costs incurred to JCC during the applicable Stop Work period. Within ninety days after a Stop Work Order is delivered to Contractor, or within any mutually agreed extension of that period, JCC will either cancel the Stop Work Order or terminate the Work, as provided in Section 26 (Termination).

B.3. If a Stop Work Order is cancelled, or the period of the Stop Work Order or any extension thereof expires, Contractor will resume Work. JCC may make an equitable adjustment in the delivery schedule, the Contract Amount, or both, if (a) the Stop Work Order increases Contractor's costs or the time required for performance; and (b) Contractor asserts its right to an equitable adjustment within thirty days after the end of the applicable Stop Work period.

B.4. If a Stop Work Order is not canceled and the Work covered by the Stop Work Order is terminated other than for cause, JCC may allow reasonable costs resulting from the Stop Work Order.

B.5. JCC will not be liable to Contractor for loss of profits because of any Stop Work Order.

3. Software License.

A. Grant of Rights.

A.1. Contractor grants to the JBEs a perpetual, irrevocable, worldwide, non-exclusive license to: (i) install and use the Licensed Software for the purpose of conducting the JBE's business; and (ii) make a reasonable number of copies of the Licensed Software for archival and/or backup purposes. The JBE's rights hereunder shall permit the installation and/or reproduction and copying of the Licensed Software, or portions thereof, to the extent reasonably necessary to enable access to and use of the Licensed Software by. Such use and access may be directly enabled or web enabled via Internet or intranet or enabled via any other communication facility.

B. License Restrictions; Additional Terms

B.1. License Restrictions. Unless expressly permitted in this Agreement or as permitted by applicable law, the JBEs shall not (i) transfer, rent or lease the Licensed Software or its usage without Contractor's prior written consent, or (ii) reverse engineer, decompile, or disassemble any portion of the Licensed Software. Any permitted transfer of the Licensed Software must include all updates and all prior versions thereof. Except with regard to any permitted transfers hereunder, the JBE shall keep the Licensed Software confidential and utilize its best efforts to prevent the unauthorized disclosure or use of the Licensed Software, and shall require its employees and third party Contractors to comply with such obligation.

B.2. Additional License Terms. The JCC and Contractor agree to the license terms, if any, set forth in Exhibit 3 (Licensed Software and Additional Terms), as additions to (as applicable) the terms of this Section 3.B.2. In the event that the additional terms set forth in Exhibit 3 (Licensed Software and Additional Terms) directly conflict with the terms of this Exhibit 2 (General Terms and Conditions), the terms of this Exhibit 2 shall control.

4. Maintenance and Support Services.

A. Maintenance. Except as otherwise provided in Exhibit 9 (Maintenance and Support), during the term of this Agreement Contractor shall provide the JBEs with Maintenance for the Licensed Software as follows: (i) such improvements, enhancements, upgrades, updates, new releases, extensions and other changes to the Licensed Software, as and when made generally available by Contractor to its other customers, including but not limited to modifications, improvements, renamed products, correction of defects, and fixes relative to the usual, general, and ordinary use and application of the Licensed Software; (ii) updates to the Licensed Software if and as required to cause the Licensed Software to operate under new versions or releases of the JBE's then-current operating system or database platform, within a reasonable time

after the general release of such new versions or releases; (iii) updates to the Licensed Software if and as required to cause the Licensed Software to support business operations of the JBE conducted in order to comply with specific provisions of California and other applicable law, as and when such law may change from time to time during the term; and (iv) Maintenance Releases to the Licensed Software if and as required.

Maintenance Releases shall not include those new modules, improvements, enhancements, upgrades or extensions which provide additional features or additional material functionality not provided or performed by the Licensed Software originally licensed to the JBEs; provided, however, that such new modules, improvements, enhancements, upgrades or extensions which provide additional features or additional material functionality shall be considered Maintenance Releases (a) in the event that such modules, improvements, enhancements, upgrades or extensions are distributed by Contractor free of charge to its customers, (b) if Contractor requires the JBE to install such new module, improvement, enhancement, upgrade or extension in order to receive or continue receiving a Maintenance Release(s) of the Licensed Software, or (c) if such modules, improvements, enhancements, upgrades or extensions constitute a new product, released by Contractor as a substitute for the Licensed Software, under circumstances where Contractor discontinues releases of or support for the Licensed Software.

B. Installation of Maintenance Releases. The JBEs shall have the right to refuse the installation or implementation of any Maintenance Release that necessitates: (i) re-training of the JBE's users, (ii) conversion of the JBE's system to a new platform or operating system, or (iii) significant reprogramming or reconfiguration of the Licensed Software.

C. Support Services. After the expiration of the Warranty Period set forth in Section 22.B.2 (Licensed Software Warranty) and thereafter during the term of this Agreement, Contractor shall provide to the JBEs the Support Services, via such method as is appropriate given the nature of the required Support Services, including without limitation telephone support, remote access support or in-person support at the JBE's location or such other location as the JBE may specify, all as more particularly described in Section 1 of Exhibit 9 (Maintenance and Support).

D. Support Service Levels. In the event that the Licensed Software fails to perform in accordance with the Specifications or otherwise contains errors, defects, bugs, nonconformity or malfunctions, the JBE shall notify the Contractor of such condition, and Contractor shall respond to the JBE's requests for Support Services in accordance with the Service Levels set forth in Exhibit 9 (Maintenance and Support). The JBE shall assign the applicable Service Level, as described in Exhibit 9 (Maintenance and Support) to each request for Support Services and Contractor shall respond according to the applicable response requirements set forth in Exhibit 9 (Maintenance and Support), based on the severity of the error, defect, bug, nonconformity or malfunction designated by the JBE. Contractor shall perform such correction or repair at no

additional charge to the JBE. In the event that Contractor is unable to complete the corrections or repairs necessary to permit the Licensed Software to perform and conform to the Specifications or to correct such error, bug, nonconformity or malfunction, then the parties shall invoke the Escalation Procedure set forth in Exhibit 9 (Maintenance and Support).

E. Suspension of Maintenance. As long as the JCC has paid any undisputed amounts of the Maintenance and Support Fee, the JBEs shall be entitled to receive Maintenance and Support Services from Contractor. Contractor shall not suspend or terminate Maintenance and/or Support Services without first obtaining either the JCC's prior written consent or an order of a court of competent jurisdiction (from which no appeal has been or can be taken) affirmatively authorizing such suspension or termination.

5. Intentionally Omitted.

6. Accounting. Contractor will maintain a system of accounting and internal controls that meets Generally Accepted Accounting Principles (U.S. GAAP).

7. Audit; Retention of Records.

A. Audit. Upon reasonable notice, Contractor will provide to the JCC, to any federal or state entity with monitoring or reviewing authority, or to the JCC's authorized representatives, access to and the right to examine and audit all records and documents relating to performance and billing under this Agreement, and, as necessary, to determine compliance with relevant federal, state, and local statutes, rules, and regulations. Contractor agrees to provide the JCC with all relevant information requested, and will permit access to its premises at reasonable times, for the purpose of interviewing employees and inspecting and copying any relevant records. Without limiting the foregoing, this Agreement is subject to examinations and audit by the State Auditor for a period of three years after final payment.

B. Retention of Records. Contractor will maintain all financial Data, supporting documents, and all other records relating to performance and billing under this Agreement for a period in accordance with state and federal law. The minimum retention period will be four years from the date of the submission of the final payment request or until audit findings are resolved, whichever is later.

8. Assignment. Contractor will not assign its rights or obligations under this Agreement, either in whole or in part, without the prior written consent of the JCC, in the form of an Amendment. Any attempted assignment will be void or invalid. This Agreement binds the parties as well as their heirs, successors, and assignees.

9. Choice of Law; Jurisdiction and Venue.

A. Choice of Law. This Agreement and performance under it will be exclusively

governed by the laws of the State of California without regard to its conflict of law provisions.

B. Jurisdiction and Venue. Contractor irrevocably consents to the exclusive jurisdiction and venue of the state and federal courts located in the County of San Francisco, California in any legal action concerning or relating to this Agreement.

10. Certifications and Representations. Contractor's signature on the cover page shall also serve as certification for the following paragraphs, 10.A-10.N.

A. ADA Compliance. Contractor certifies that it and its Subcontractors comply with applicable provisions of the Americans with Disabilities Act ("ADA") of 1990 (42 U.S.C. Sections 012101 *et seq.*), which prohibits discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.

B. FEHA Compliance. Contractor certifies that it and its Subcontractors comply with all applicable provisions of the Fair Employment and Housing Act, Calif. Gov. Code, § 12990 *et seq.*, and all applicable regulations promulgated under Calif. Code of Regulations, title 2, § 7285 *et seq.*

Contractor certifies that it and its Subcontractors will not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, disability, marital status, age (over 40), sex, or sexual orientation. Contractor will ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

Contractor certifies that it and its Subcontractors will not unlawfully harass, including sexually harass, any persons with whom Contractor or its Subcontractors interact in the performance of this Work. Contractor and its Subcontractors will take all reasonable steps to prevent such harassment.

C. Drug-free Workplace. Contractor certifies that it and its Subcontractors will provide a drug-free workplace as required by Calif. Gov. Code, §§ 8355–8357.

D. Labor/Collective Bargaining. Contractor certifies that it and its Subcontractors will provide notice of their obligations under the foregoing provisions to labor organizations with which it or they have collective bargaining agreements, prior to execution of this Agreement.

E. National Labor Relations Board (NLRB) Certification. Contractor certifies that, within the immediately preceding two-year period, no more than one final, unappealable finding of contempt of court by a federal court has been issued against Contractor because of Contractor's failure to comply with an order of the National Labor Relations Board.

F. Prohibition Against Hiring JCC Employees. Contractor certifies and will require all Subcontractors to certify to the following:

“Former JCC employees will not be offered employment position for two years from the date of separation, if that employee participated in the decision-making process relevant to the Agreement, or for one year from the date of separation if that employee was in a policy-making position in the same general subject area as the proposed Agreement, within the prior twelve-month period of JCC employment.”

G. No Interference with Other Contracts. Contractor certifies that to the best of Contractor’s knowledge, this Agreement does not create a conflict of interest or default under any of Contractor’s other contracts.

H. No Litigation. Contractor certifies that no suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or, to Contractor’s knowledge, threatened against or affecting Contractor or Contractor’s business, financial condition, or ability to perform this Agreement, except any suit, action, arbitration, proceeding, or investigation that individually or in the aggregate with others will not or would not have a material adverse effect on Contractor’s business, the validity or enforceability of this Agreement, or Contractor’s ability to perform this Agreement.

I. Domestic Partners; Spouses; Gender Discrimination. If the Contract Amount is \$100,000 or more: Contractor certifies that it is in compliance with: (i) PCC 10295.3, which, subject to specified exceptions, generally prohibits discrimination in the provision of benefits between employees with spouses and employees with domestic partners, or discrimination between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex, or discrimination between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees; 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.

J. Expatriate Corporation. Contractor certifies that it 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 JCC. (Expatriate corporations are certain foreign incorporated entities that are publicly traded in the United States. For additional information, see PCC 10286.1.)

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

- a) No apparel, garments or corresponding accessories, equipment, materials, or

supplies furnished to the JCC under this Agreement have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that it adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and PCC 6108.

b) Contractor cooperates fully in providing reasonable access to Contractor's records, documents, agents, and employees, and premises if reasonably required by authorized officials of the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under this section and shall provide the same rights of access to the JCC.

L. Child Support Compliance Act. If the Contract Amount is greater than \$100,000:

a) Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b) Contractor, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

M. Small Business Preference Contract Clause. This provision 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. Contractor must within sixty (60) days of receiving final payment under this Agreement report to the JCC 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 75 percent of the person-hours of direct labor required for the production of goods and the provision of services performed pursuant to this Agreement.

N. Federally-funded Agreements. If this Agreement is funded in whole or in part by the federal government, then:

(a) It is mutually understood between the parties that this Agreement may have been written for the mutual benefit of both parties before ascertaining the

availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.

(b) This Agreement is valid and enforceable only if sufficient funds are made available to the JCC by the United States Government for the fiscal year in which they are due and consistent with any stated programmatic purpose. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this Agreement in any manner.

(c) The parties mutually agree that if the Congress does not appropriate sufficient funds for any program under which this Agreement is intended to be paid, this Agreement shall be deemed amended without any further action of the parties to reflect any reduction in funds.

(d) The parties may amend the Agreement to reflect any reduction in funds.

11. Conflict of Interest; Prohibition Against Gratuities.

A. Conflict of Interest.

Contractor has no interest that would constitute a conflict of interest under (i) PCC 10365.5, 10410 or 10411; (ii) Government Code sections 1090 et seq. or 87100 et seq.; or (iii) California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with judicial branch entities.

B. Prohibition Against Gratuities.

B.1. Contractor covenants that no gratuities, in the form of entertainment, gifts, or otherwise, were offered by Contractor or any agent, director, or representative of Contractor, to any officer, official, agent, or employee of a JBE, in an effort to secure the Agreement or favorable treatment with respect to any determinations concerning the performance of the Agreement.

B.2. For any breach or violation of this covenant, the JCC has the right to terminate the Agreement for cause, either in whole or in part. Any loss or damage sustained by the JCC in procuring, on the open market, replacement goods or services that Contractor agreed to provide, will be borne and paid for by Contractor. The JCC's rights and remedies under this provision are in addition to any other rights and remedies provided by law or under this Agreement.

12. Consideration; Payment. The consideration paid to Contractor is the entire compensation for all Work performed under this Agreement, including all of Contractor's approved reimbursable expenses incurred, such as travel and per diem expenses, unless otherwise expressly provided, as set forth in Exhibit 7 (Fees, Pricing and Payment Terms).

A. Payment Does Not Imply Acceptance of Work. The JCC's payment will not relieve Contractor from its obligation to replace unsatisfactory Work, even if the unsatisfactory character of such Work may have been apparent or detected at the time such payment was made. Work, Data, or components that do not conform to requirements of this Agreement will be rejected, and will be replaced by Contractor, without delay or additional cost to the JCC.

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

13. Contractor Status.

A. Independent Contractor.

A.1. Contractor, Subcontractors, and their officers, agents, employees, and all others acting on behalf of Contractor for this Work, act as independent contractors and not as JCC agents, officers or employees. Contractor has no authority to bind or incur any obligation on behalf of the JCC. Except as expressly provided in Exhibit 5 (Statement of Work), Contractor has no authority or responsibility to exercise any rights or power vested in the JCC.

A.2. This Agreement will not be considered under any circumstance to create a joint-venture relationship.

A.3. If any governmental entity concludes that Contractor is not an independent contractor, the JCC may terminate this Agreement immediately upon Notice. Alternatively, Contractor may agree to a reduction in the JCC's financial liability, so that JCC's total costs under this Agreement do not exceed the originally contemplated amount.

B. Permits, Laws, and Regulations.

B.1. Contractor must observe and comply with all applicable laws, rules, and regulations affecting the Work. During the term of this Agreement, Contractor will obtain and keep in full force and effect, all permits and licenses necessary to accomplish the Work. Such permits and licenses will be made available to the JCC, upon request.

B.2. Contractor will promptly provide Notice to the JCC of any conflict discovered between the Agreement and any applicable laws, rules, regulations, and/or permits and licenses, and await resolution of the conflict. If Contractor proceeds with the Work in question without resolution of the conflict, Contractor will be solely liable

for any costs, fines, penalties, or damages that accrue, including costs for remedial work required to comply with such requirements.

C. Subcontracting.

C.1. Contractor will not engage a Subcontractor to perform any portion of this Work, without the express written consent of the JCC. Any subcontracting without the JCC's written consent is a material breach of this Agreement.

C.2. Contractor warrants and represents that all Subcontractors will be subject to the same terms and conditions applicable to Contractor under this Agreement. Contractor will incorporate this Agreement as the prime agreement in any subcontracting relationship. Contractor will be liable for all Subcontractor acts or omissions, including indemnity obligations.

D. Authority. Contractor has all requisite power and authority to conduct its business, and to execute and perform the Agreement. If Contractor is a corporation, limited liability company, or limited partnership, Contractor is qualified to do business and in good standing in the State of California.

14. Dispute Resolution. The JCC and Contractor will attempt, in good faith, to resolve any disputes informally. Contractor will meet with JCC's Project Manager or other designated representative to discuss the matter and any actions necessary to resolve a dispute.

A. Escalation.

A.1. If a dispute remains unresolved either party may give Notice requesting each party's chief executive officer ("CEO") or designated representative to meet, exchange information and attempt resolution within fifteen days of receipt of the Notice.

A.2. If the matter is not resolved as set forth in the preceding subsection, the aggrieved party will submit a second Notice which will:

- a) provide detailed factual information;
- b) identify the specific provisions in this Agreement on which any demand is based;
- c) advise if the demand involves a cost adjustment and, if so, provide the exact amount, accompanied by all supporting records; and
- d) attach a declaration that the demand is made in good faith, the supporting data are accurate and complete, and the amount requested properly reflects the necessary adjustment. Notice will be signed by an authorized representative of the aggrieved party.

e) If the negotiations do not result in resolution of the dispute within forty- five (45) calendar days after receipt of the Notice, the parties agree to mediation prior to any party initiating an legal action or process in court.

A.3. Each party will comply with reasonable requests for additional information. Any additional information will be provided within fifteen days after receipt of a written request, unless otherwise agreed.

B. Confidentiality During Dispute Resolution. All dispute resolution negotiations are considered confidential, and will be treated as compromise and settlement negotiations, to which California Evidence Code § 1152 applies.

C. Continued Performance of Work. Pending final resolution of any dispute, Contractor agrees to proceed diligently with the performance of the Work, including Work associated with the dispute, unless otherwise directed by the JCC. Contractor's failure to diligently proceed in accordance with the JCC's instructions will be considered a material breach of the Agreement.

15. Force Majeure.

A. Force Majeure events include, but are not limited to:

- a) catastrophic acts caused by nature or public enemy;
- b) civil disorder;
- c) fire or other casualty for which a party is not responsible; and
- d) quarantine or epidemic.

The party asserting a Force Majeure event will immediately provide Notice to the other party of the occurrence and nature of the Force Majeure event, and its expected impact on schedule. The party claiming Force Majeure will use commercially reasonable efforts to continue or resume performance, including alternate sources or means. Contractor will have no right to additional payment for costs incurred as a result of a Force Majeure event.

B. Any assertion of a Force Majeure event by Subcontractors will be attributed to Contractor.

16. Indemnification.

A. To the fullest extent permitted by law, Contractor will indemnify, hold harmless, and defend (with counsel satisfactory to the indemnified party) the JBEs and their respective agents, officers, and employees from and against any and all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorneys' fees, arising or resulting from, or in connection with: (i) Contractor's provision of, or

failure to provide, the Work (ii) any other breach by Contractor under this Agreement; or (iii) Third Party claims relating to infringement or misappropriation of any intellectual property right(s) by Contractor or the Work, including software, services, systems, equipment, or other materials provided by Contractor or Subcontractors to the JBEs. 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 and Work. 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 JBE's prior written consent, which consent shall not be unreasonably withheld; and such 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.

B. For Contractor's acts, errors, or omissions which are covered by Contractor's Professional Liability insurance, Contractor will provide the above indemnification for that proportion of damages, costs, and liabilities that are attributed to Contractor, or any of its Subcontractors, but not for the JBE's proportionate share of liability, if any.

C. Contractor's obligation to defend, indemnify, and hold the JBEs and their respective agents, officers, and employees harmless is not limited to, or restricted by, any requirement in this Agreement that Contractor procure and maintain a policy of insurance.

17. Insurance Requirements. The Contractor shall maintain the following types of insurance in full force during the term of this Contract.

17.1 Basic Coverage:

- (a) Workers Compensation and Employer's Liability. The policy is required only if Contractor has employees. It 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 million per accident or disease;
- (b) Commercial General Liability. The policy must be written on an occurrence form with limits of not less than \$1 million per occurrence, and a \$2 million annual aggregate. Each policy must include coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed in a contract.; and

- (c) Professional Liability. The policy must cover Contractor's acts, errors and omissions committed or alleged to have been committed which arise out of rendering or failure to render services provided under this Agreement. The policy shall provide limits of not less than \$1 million per occurrence and annual aggregate.
 - (d) Commercial Automobile Liability. If an automobile is used in providing the Work, automobile liability insurance with limits of not less than \$1 million per accident. Such insurance must cover liability arising out of the operation of a motor vehicle, including owned, hired, and non-owned motor vehicles, assigned to or used in connection with providing the Work.

- 17.2** "Claims Made" Coverage. If any required insurance is written on a "claims made" form, Contractor shall maintain the coverage continuously throughout the Term, and, without lapse, for three years beyond the termination or expiration of this Agreement and the JCC's acceptance of all Work provided under this Agreement. The retroactive date or "prior acts inclusion date" of any "claims made" policy must be no later than the date that Work commences under this Agreement.

- 17.3** Umbrella Policies. Contractor may satisfy basic coverage limits through any combination of primary, excess or umbrella insurance.

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

- 17.5** Deductibles and Self-Insured Retentions. Contractor is responsible for and may not recover from the JBE, including JBE personnel, any deductible or self-insured retention that is connected to the insurance required under this Section 17.

- 17.6** Additional Insured Status. With respect to commercial general liability, automobile liability insurance, and, if applicable, umbrella policy, the policies must be endorsed to name the JBEs and JBE personnel as additional insureds with respect to liabilities arising out of the performance of the Agreement.

- 17.7** Certificates of Insurance. Before Contractor begins providing Work, Contractor shall give the JCC certificates of insurance attesting to the existence of coverage, and stating that the policies will not be canceled, terminated, or amended to reduce coverage without 30 or more days' prior written notice to the JCC. Any replacement certificates of insurance are subject to the approval of the JCC, and, without prejudice to the JCC, Contractor shall not provide Work before the JCC approves the certificates.

- 17.8** Qualifying Insurers. For insurance to satisfy the requirements of this section, all required insurance must be issued by an insurer with an A.M. Best rating of A - or better that is approved to do business in the State of California.
- 17.9** Required Policy Provisions. Each policy must provide, as follows:
- (a) Insurance Primary; Waiver of Recovery. With respect to commercial general liability and automobile liability insurance, the policies must be endorsed to be primary and noncontributory with any insurance or self-insurance programs maintained by JBEs and JBE personnel. Contractor waives any right of recovery it may have, and will require that any insurer providing commercial general liability, workers compensation, and automobile liability to also waive any right of recovery it may have against JBEs and JBE Personnel for liability arising out of the Work; and
 - (b) Separation of Insureds. The insurance applies separately to each insured against whom a claim is made and/or a lawsuit is brought, to the limits of the insurer's liability.
- 17.10** Partnerships. If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either of the following methods: (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.
- 17.11** Consequences of Lapse. If required insurance lapses during the Term, the JCC is not required to process invoices after such lapse until Contractor provides evidence of reinstatement that is effective as of the lapse date.

18. Confidentiality; Non-Disclosure.

A. Contractor's Responsibilities. While performing Work under this Agreement, Contractor and its Subcontractors may gain access to Confidential Information that, if disclosed to Third Parties, may be damaging to a JBE, its personnel, JBE users, or other government entity. Neither Contractor nor its Subcontractors acquires any right or title to the Confidential Information, and Contractor and its Subcontractors agree not to disclose any Confidential Information to any third party. All Confidential Information disclosed to or received by Contractor or its Subcontractor will be held in strict confidence and used only in performance of Work under this Agreement. In the event of any unauthorized disclosure or loss of Confidential Information, Contractor will immediately provide Notice to the JBE, with pertinent details of the unauthorized disclosure or loss, and any remedial measures taken.

B. Permissible Disclosures. Contractor may disclose the JBE's Confidential Information on a "need to know" basis to Contractor's employees and Subcontractors

and any representatives of the JBE that are working on the project, provided that Contractor requires its Subcontractors to comply with the confidentiality provisions of this Agreement. Additionally, Contractor may disclose the Confidential Information, to the extent necessary to (i) comply with any applicable law, rule, regulation, or ruling; (ii) respond to any enforceable summons or subpoena; or (iii) enforce its rights under this Agreement.

C. JBE Responsibilities. The JCC agrees that: (a) the Licensed Software shall be treated as the Confidential Information of Contractor; (b) it shall take all commercially reasonable actions necessary to protect and ensure the confidentiality of the Licensed Software and, without limiting the foregoing, will exercise at least the same degree of care to safeguard the confidentiality of the Licensed Software as the JCC would exercise to safeguard the JCC's Confidential Information. The JCC agrees to require the other JBEs to comply with the confidentiality provisions of this Section 18.

D. Return of Confidential Information. Upon the written request of a JBE, Contractor shall deliver to the JBE all items, including, but not limited to, drawings, descriptions, test data or other papers or documents, which may contain any of the JBE's Confidential Information, as well as any copies thereof, that Contractor has in its possession.

E. Breach of Confidentiality. Contractor and JCC each acknowledge as the receiving party that, due to the unique nature of the disclosing party's Confidential Information, there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach will likely result in irreparable harm to the disclosing party, and therefore, that upon any material breach of the confidentiality obligations in this Section 18 (Confidentiality; Non-Disclosure), the disclosing party shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.

19. Data Security.

A. JBE Data Security and Access. "JBE Data" means information or other content related to the business or operations of a JBE and its users or personnel, including without limitation court case information, personally identifiable information, a JBE's Confidential Information, and any information or content that a JBE's personnel, agents, and users upload, create, or modify through the services, software, or networks provided by Contractor under this Agreement. Unauthorized use or disclosure of JBE Data (including data mining, or any commercial use) by Contractor or third parties is prohibited. Contractor is responsible for the security and confidentiality of JBE Data under its control. JBE retains all right and title to JBE Data.

Contractor shall implement and maintain the industry-standard safeguards (including appropriate administrative, physical, technical, and procedural safeguards) against the destruction, loss, misuse, unauthorized disclosure or access, or alteration of JBE Data, and Contractor shall comply with privacy and data security requirements set forth in

applicable laws, this Agreement, or in the JBE's policies or procedures. Confidential, sensitive, or personally identifiable information shall be encrypted in accordance with the industry standards, applicable laws, this Agreement, and JBE policies and procedures.

No services (and related Work) shall be provided from outside the continental United States. Remote access to JBE Data from outside the continental United States, is prohibited unless approved in advance by the JBE. The physical location of Contractor's data center where JBE Data is stored shall be within the continental United States. The JBE Data shall be available to the JBE (and its authorized users) 24 hours per day, 365 days per year (excluding agreed-upon maintenance downtime).

B. Data Breach. Upon discovery or reasonable belief of any Data Breach, Contractor shall notify the JBEs affected by the Data Breach through the fastest means available and also in writing, and in any event within twenty-four (24) hours after Contractor's discovery (or reasonable belief) of the Data Breach. A "Data Breach" means any access, destruction, loss, theft, use, modification or disclosure of JBE Data by an unauthorized party. Contractor's notification shall identify: (i) the nature of the Data Breach; (ii) the data accessed, used or disclosed; (iii) who accessed, used, disclosed and/or received data (if known); (iv) what Contractor has done or will do to mitigate the Data Breach; and (v) what corrective action Contractor has taken or will take to prevent future Data Breaches.

Contractor will provide daily updates, or more frequently if required by the JBE, regarding findings and actions performed by Contractor until the Data Breach has been effectively resolved to the JBE's satisfaction. Contractor shall conduct an investigation of the Data Breach and shall share the report of the investigation with the JBE. The JBE and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Contractor shall cooperate fully with the JBE, its agents and law enforcement.

C. Security Assessments. Upon advance written request by a JBE, Contractor agrees that a JBE shall have reasonable access to Contractor's operational documentation, records, logs, and databases that relate to data security. Upon a JBE's request, Contractor shall, at its expense, perform, or cause to have performed an assessment of Contractor's compliance with its data security obligations. Contractor shall provide to the JBE the results, including any findings and recommendations made by Contractor's assessors, of such assessment, and, at its expense, take any corrective actions.

D. Data Requests. Contractor shall promptly notify the JBE upon receipt of any requests which in any way might reasonably require access to the JBE Data. Contractor shall not respond to subpoenas, service of process, Public Records Act requests, and other legal requests directed at Contractor regarding this Agreement or JBE Data without first notifying the affected JBE. Contractor shall provide its intended responses to the JBE with adequate time for the JBE to review, revise and, if necessary, seek a protective order in a court of competent jurisdiction. Contractor shall not respond to

legal requests directed at the JBE unless authorized in writing to do so by the JBE.

20. Ownership of Intellectual Property.

A. Except as provided in this Agreement, Contractor agrees that (i) all Data, Deliverables, Materials and Work created in whole or in part by Contractor in the course of or related to providing services to a JBE under this Agreement shall be treated as if it were “work for hire” for the JBE, and (ii) the Contractor will immediately disclose to the JBE all discoveries, inventions, enhancements, improvements, and similar creations (collectively, “Creations”) made, in whole or in part, by the Contractor in the course of or related to providing services to the JBE.

B. All ownership and control of Creations, Data, Deliverables, Materials and Work, including any copyright, patent rights, and all other intellectual property rights therein, shall vest exclusively with the JBE. Contractor hereby assigns all right, title, and interest that Contractor may have in such Creations, Data, Deliverables, Materials and Work to the JBE, without any additional compensation and free of all liens and encumbrances of any type. Contractor agrees to execute any documents required by the JCC to register its rights and to implement the provisions herein.

C. Notwithstanding any other provision to the contrary, this Agreement grants the JBEs no title or rights of ownership in the Licensed Software.

21. Modification. No modification or change to this Agreement will be valid without written approval by the JCC, in the form of an Amendment, including any changes to Exhibit 5 (Statement of Work).

22. Standard of Performance; Warranties.

A. Standard of Performance. Contractor will perform all Work with the requisite skill and diligence consistent with professional standards for the industry and type of work performed under the Agreement, and pursuant to the governing rules and regulations of the industry. Contractor understands that the JBEs rely on the accuracy, competence, and completeness of Contractor’s services. Contractor will maintain and implement industry- standard safeguards against the destruction, loss, misuse, unauthorized disclosure, or alteration of Data and the JBE’s Confidential Information, and such other related safeguards that are set forth in applicable laws, rules, and regulations, or pursuant to JBE policies or procedures.

B. Warranties.

B.1. Services Warranty. Contractor warrants and represents that the Work and all Deliverables furnished will conform to the requirements of this Agreement for a period of one (1) year from the date of first productive use of the Work or Deliverable, as applicable, and that such Work and Deliverables will be merchantable, fit for their intended purposes, free from all defects in materials and

workmanship, and, to the extent not manufactured pursuant to detailed designs furnished by the JCC, free from defects in design. The JCC's approval of designs or specifications furnished by Contractor will not relieve Contractor of its obligations under this warranty.

B.2. Licensed Software Warranty. Contractor hereby warrants and represents that, commencing on the date of the JCC's acceptance, final cutover or first productive use of the Licensed Software, whichever is latest, and for a period of one (1) year thereafter, that (i) the Licensed Software, as installed and configured on the JBE's systems, will perform in accordance with and conform to the applicable Specifications in all material respects, and (ii) the Licensed Software will be appropriately adapted, as and to the extent necessary, to operate effectively using the JBE's existing environment as installed as of the Effective Date hereof.

B.3. Virus Protection Warranty. Contractor hereby warrants and represents that, any time the Licensed Software or any Maintenance Release(s) are delivered to the JBE, whether delivered via electronic media or the internet, no portion of the Licensed Software or Maintenance Release(s), or the media upon which it is stored or delivered, will have any type of software routine or other element which is designed to facilitate or is capable of facilitating: (i) unauthorized access to or intrusion upon; (ii) disabling or erasure of; or (iii) unauthorized interference with, the operation of any hardware, software, data or peripheral equipment of or utilized by the JBE, or any contamination which might impact the JBE's network or data.

B.4. Four-Digit Date Compliance. Contractor represents and warrants that it will provide only Four-Digit Date Compliant deliverables and/or services to the JBE. "Four-Digit Date Compliant" deliverables and services can accurately process, calculate, compare, and sequence date data, including, without limitation, 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.

B.5. Warranty of Law. Contractor warrants and represents that to the best of Contractor's knowledge: (i) there is no claim, litigation or proceeding pending or threatened against Contractor with respect to the Licensed Software or any component thereof alleging infringement of any patent or copyright or any trade secret or any proprietary right of any person; (ii) the Licensed Software complies in all material respects with applicable laws, rules and regulations; (iii) Contractor has full authority to enter into this Agreement and to consummate the transactions contemplated hereby; and (iv) Contractor's performances under this Agreement are not materially impaired or prohibited by any other agreement to which Contractor is a party or by which it may be bound. Contractor warrants that it complies with all laws, rules and regulations applicable to Contractor's business and services.

B.6. Warranty of Title. Contractor warrants and represents that (i) it has good title

to the Licensed Software; (ii) it has the absolute right to grant to the JBEs the licenses granted hereunder; (iii) the JBEs shall quietly and peacefully possess and use any Licensed Software provided hereunder, subject to and in accordance with the provisions of this Agreement; and (iv) Contractor shall be responsible for, has and shall have full authority to license all proprietary and/or third party software modules, algorithms and protocols that are incorporated into the Licensed Software (the "Title Warranty").

B.7. Support Services Warranty. Contractor hereby warrants and represents that each of its employees, independent contractors or agents assigned to perform any Support Services or provide any technical assistance in configuration, development and implementation, training, use and related services under the terms of this Agreement shall have the skill, training, and background reasonably commensurate with his/her level of performance or responsibility, so as to be able to perform in a competent and professional manner.

B.8. Effect of Breach of Warranty. If, at any time during the term of this Agreement, Contractor breaches any warranty under this Section 22, the JCC shall promptly notify Contractor in writing of such alleged breach of warranty, and shall include if applicable the information required pursuant to Exhibit 9 (Maintenance and Support). If the breach relates to the Licensed Software Warranty or Virus Protection Warranty, then Contractor shall correct any such deficiency in the Licensed Software in accordance with the Service Level criteria set forth in Exhibit 9 (Maintenance and Support). If the breach relates to Section 22.B.5 (Warranty of Law), then Contractor shall promptly correct the identified deficiency. If the breach relates to Section 22.B.6 (Warranty of Title), then Contractor shall promptly either: (a) procure for the JBE the right to continue use of the Licensed Software at no additional charge to the JBE, (b) modify such Licensed Software to avoid the claimed infringement (provided that such modification does not adversely affect the JBE's intended use of the Licensed Software) at no additional charge to the JBE, or (c) replace said Licensed Software with an equally suitable, compatible and functionally equivalent non-infringing software, including installation and configuration as required, at no additional charge to the JBE. If none of the foregoing options is practicable, then the JCC may terminate this Agreement as hereinafter provided in this section.

If the breach relates to Section 22.B.7 (Support Services Warranty), then Contractor shall promptly re-perform the nonconforming Support Services, until such time as the nonconformance is corrected or the parties otherwise agree in writing. If after reasonable efforts Contractor is unable to correct any such breach of warranty as described in this section, and the resulting non-performance or deficiency materially affects the ability of the JBE to utilize the Licensed Software, then the JCC may terminate this Agreement in accordance with Section 26.A (Termination for Cause), subject to the transition provisions of Exhibit 11 (Transition Services), in which event JCC shall have all remedies available at law or equity.

B.9. All warranties will inure to JCC, its successors, assigns, customer agencies, and users of the Work provided hereunder.

23. Personnel Requirements.

A. Contractor will use adequate numbers of qualified individuals with suitable training, education, experience, and skill to perform the Work. For continuity, Contractor will endeavor to retain the same individuals during the performance of Work.

B. JCC reserves the right to disapprove Contractor's personnel, if dissatisfied with their performance. Upon receipt of such Notice, Contractor will immediately assign replacement personnel, with equivalent or greater experience and skills, who are acceptable to the Project Manager.

C. Contractor will be responsible for all costs associated with replacing personnel, including additional costs to familiarize replacement personnel with the Work. If Contractor does not promptly furnish replacement personnel acceptable to the Project Manager, JCC may terminate this Agreement for cause.

24. Background Checks.

A. For Contractor's employees, Subcontractors, or agents performing work, and with access to JCC's systems (on-site or remotely) in the performance of their Work under this Agreement, JCC will have the right, but not the obligation, to request or conduct a background check, before granting access to JCC's premises or systems or at any other time. Contractor will cooperate with JCC in performing any background checks, will provide prompt Notice to JCC of (i) any person refusing to undergo such background check, and will immediately remove such person from the project, and (ii) the results of any background check as requested by JCC. Contractor will obtain all releases, waivers, or permissions required for the release of such information to JCC. Any additional costs will be borne by Contractor.

B. Granting or denying access will be at the sole discretion of the JCC. Contractor will receive a written response with a notification of "Approved" or "Denied" for the facility access for each individual. No background information will be released to Contractor.

C. It is the responsibility of Contractor to notify the JCC of any additional staff or change in staff, to submit to the JCC a completed and signed Application and Consent for Background Check form for each person, and to receive authorization from the JCC before the individual begins to work in a JCC facility.

25. Survival. All provisions of this Agreement, which by their nature or intent, extend beyond the term of this Agreement will survive termination or expiration of this Agreement, including, without limitation, the following provisions: License, Assignment, Audit Rights

and Retention of Records, Confidentiality, Indemnification, Limitation of Liability, Warranties, and Transition.

26. Termination; Term of Agreement.

A. Termination for Cause. The JCC may terminate this Agreement, in whole or in part, and be relieved of any payments, if Contractor fails to perform any of its obligations under this Agreement at the time or in the manner agreed. The JCC may proceed with the Work in any manner deemed proper. All costs to the JCC arising from Contractor's default, including costs to complete or correct the Work, will be deducted from any sum due Contractor. Contractor will not be entitled to recover overhead or profit on the uncompleted portions of the Work.

B. Termination for Convenience.

B.1. The JCC may terminate this Agreement, in whole or in part, at any time and for any reason, upon at least ten (10) days Notice to Contractor. Upon receipt of the termination Notice, Contractor will promptly discontinue Work as specified in the Notice.

B.2. If the JCC terminates all or part of this Agreement other than for cause, the JCC will pay Contractor for the Work satisfactorily performed prior to the termination. Contractor will not recover overhead or profit on the uncompleted portions of the Work.

C. Termination Due to Fund Appropriation and Availability.

C.1. The JCC's obligations under this Agreement are subject to the availability of funds authorized for this Work. 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.

C.2. Upon Notice, the JCC may terminate this Agreement in whole or in part, without prejudice to any right or remedy of the JCC, for lack of appropriation of funds. Upon termination, the JCC will pay Contractor for the fair value of Work satisfactorily performed prior to the termination, not to exceed the total Agreement amount.

D. Effect of Termination.

D.1. Upon any expiration or termination, the JCC will have the right to take possession of any materials, equipment, Deliverables, and other Work including partially completed Work. Contractor will immediately assign to the JCC all of Contractor's right, title, and interest in and to such Work and related materials

and work product, and any and all intellectual property rights.

D.2. Upon termination of any kind, the JCC may withhold from payment any sum that the JCC determines to be owed to the JCC by Contractor, or necessary to protect the JCC against loss due to outstanding liens or claims of former lien holders.

D.3. **Transition services.** Contractor shall provide the transition services and procedures set forth on Exhibit 11 (Transition Services), upon request of the JCC, in the event of any termination of this Agreement.

E. Escrow of Source Code. Concurrently with or within a reasonable time after the execution of this Agreement, the parties agree to execute, and to abide by and comply with, an escrow agreement for the Licensed Software Source Code (the "Source Code Escrow Agreement") with an escrow agent to be selected and/or approved by the JCC. The terms of the Source Code Escrow Agreement shall include, without limitation, provisions whereby: (1) Contractor would deposit the Source Code for the Licensed Software and the related source documentation (the "Deposit Materials") and (2) such Deposit Materials would be released to the JCC immediately upon the occurrence of an Event of Release. An "Event of Release" means one or more of the following events: (a) Contractor ceases to provide Maintenance and Support for the Licensed Software as provided in this Agreement and/or fails to provide such support through another appropriate source; (b) Contractor ceases doing business as a going concern; (c) Contractor files a voluntary petition in bankruptcy or any petition for similar relief; (d) any involuntary petition in bankruptcy is filed against Contractor and shall not have been dismissed within sixty (60) days from the filing thereof; (e) a receiver is appointed for Contractor or any material portion of the property of Contractor; (f) Contractor makes an assignment for the benefit of creditors; or (g) Contractor is unable to pay its debts as they become due. Unless otherwise agreed between the parties, Contractor shall bear the escrow fees due under such escrow agreement. In the event of a release of the Deposit Materials to the JCC, Contractor hereby grants to the JBEs a non-exclusive, perpetual, fully paid-up license to reproduce and use such Deposit Materials for the sole and exclusive purpose of providing support and maintenance for the Licensed Software. Notwithstanding any provision in the Source Code Escrow Agreement, in the event that the Source Code is released pursuant to such Source Code Escrow Agreement, the JCC shall have the right to approach, negotiate or contract directly or indirectly with any party, including without limitation any subcontractor to or affiliate of Contractor, for the purpose of procuring ongoing maintenance and support services for the Licensed Software Source Code.

F. Term. The term of this Agreement shall commence on the Effective Date and terminate on the date set forth on the first page of this Agreement, unless terminated earlier in accordance with the terms of this Section 26. The JCC shall have the following options to extend: _____.

27. Time is of the Essence. Time of performance is of the essence in the performance

of services by Contractor under this Agreement.

28. Waiver; Severability.

A. Waiver of Rights. The JCC's action, inaction, or failure to enforce any right or provision of this Agreement is not a waiver of its rights, and will not prevent the JCC from enforcing such rights on any future occasion.

B. Severability. The provisions of this Agreement will be effective in all cases, unless otherwise prohibited by applicable state or federal law. The provisions of this Agreement are separate and severable. The invalidity of any sentence, paragraph, provision, section, or portion of this Agreement will not affect the validity of the remainder of this Agreement.

29. Loss Leader. Contractor shall not sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code.

30. Antitrust Claims. If goods or services under this Agreement were obtained by means of a competitive bid:

A. Assignment. Contractor shall assign to the JCC 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 JCC. Such assignment shall be made and become effective at the time the JCC tenders final payment to the Contractor.

B. Reimbursement. If the JCC receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, the Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the JCC any portion of the recovery, including treble damages, attributable to overcharges that were paid by the Contractor but were not paid by the JCC as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

C. Reassignment. Upon demand in writing by the Contractor, the JCC shall, within one year from such demand, reassign the cause of action assigned under this part if the Contractor has been or may have been injured by the violation of law for which the cause of action arose and (a) the JCC has not been injured thereby, or (b) the JCC declines to file a court action for the cause of action.

31. Recycling. Upon request, Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in PCC 12200, in products, materials, goods, or supplies offered or sold to the JCC regardless of whether the product meets the requirements of PCC 12209. With respect to printer or duplication cartridges that comply with the requirements of PCC 12156(e), the certification required by this

subdivision shall specify that the cartridges so comply.

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

33. DVBE Participation Certification. If for this Agreement Contractor made a commitment to achieve disabled veteran business enterprise (“DVBE”) participation, then Contractor must within 60 days of receiving final payment under this Agreement (or within such other time period as may be specified elsewhere in this Agreement) certify in a report to the JCC: (1) the total amount the prime Contractor received under the Agreement; (2) the name and address of the DVBE(s) that participated in the performance of the Agreement; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Agreement have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Military & Veterans Code section 999.5(d); Government Code section 14841)

34. Union Activities. Contractor agrees that no JCC funds received under this Agreement 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 JCC funds were used for those expenditures. Contractor will provide those records to the Attorney General upon request.

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

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

37. Singular and Plural Usage. All references to the plural herein shall also mean the singular and to the singular shall also mean the plural unless the context otherwise requires.

38. Entire Agreement.

A. Headings or captions to the provisions of this Agreement are solely for the convenience of the parties and will not be used to interpret or determine the validity of this Agreement.

B. This Agreement was negotiated between the parties, and neither party “prepared” this Agreement for purposes of California Civil Code §1654. Any ambiguity will not be construed against the drafter, but rather the terms and provisions will be given a

reasonable interpretation.

C. This Agreement constitutes the entire and final understanding of the parties regarding this matter, and supersedes and terminates any and all prior or contemporaneous negotiations, representations, understandings, discussions, offers, proposals, or agreements between the parties, whether written or oral, express or implied, relating in any way to this matter.

39. Notices. Notices regarding this Agreement 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>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.

END OF EXHIBIT 2

EXHIBIT 3

LICENSED SOFTWARE AND ADDITIONAL TERMS

(Licensed Software and Additional Terms to be provided by Contractor and negotiated between the parties, as necessary.)

EXHIBIT 4

SPECIFICATIONS

(Specifications, as defined in Exhibit 1, to be supplied by Contractor and negotiated between the parties, as necessary.)

EXHIBIT 5

STATEMENT OF WORK

(The Statement of Work will incorporate the requirements set forth in RFP #: IT-DMS-2016-01-MDS, RFP Title: Enterprise Management Document Management Services and will be negotiated based upon the Contractor's response to the RFP #: IT-DMS-2016-01-MDS. At a minimum, it will identify a project timeline, milestones, deliverables, and payment schedule.)

EXHIBIT 6

ACCEPTANCE AND SIGN-OFF FORM

Acceptance and Sign-Off Form

Description of Work provided by Contractor:

Date submitted: _____

Work is:

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

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

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

Please note level of satisfaction:

Poor Fair Good Very Good Excellent

Comments, if any:

Work is accepted.

Work is unacceptable as noted above.

Name: _____

Title: _____

Date: _____

END OF EXHIBIT 6

EXHIBIT 7

FEES, PRICING AND PAYMENT TERMS

1. Fees.

A. Licensed Software fees; third-party software fees.

[Contractor to insert its proposed pricing structure, including payment schedule, for consideration by JCC]

B. Maintenance and Support fees.

[Contractor to insert its proposed pricing structure, including payment schedule, for consideration by JCC]

C. Service and Contractor Personnel rates table.

[Contractor to insert its proposed rate table for services and personnel: implementation, configuration, software customization development, programming, training, etc.]

D. (Any other fees.)

2. Payment Terms.

A. Invoice Procedures. After the JCC has accepted Services and Work, Contractor will send one original and two copies of a correct, itemized invoice for the accepted Services and Work to “Accounts Payable,” at the address shown below. Invoices shall reference the Purchase Order Number and/or Contract as applicable.

Submitted invoices are to be in accordance with Exhibit 6 (Acceptance and Sign Off Form).

The JCC will not pay in advance for services. Invoices are to be submitted in arrears for the services provided and within thirty (30) days of the accepted work. Billing shall cover services not previously invoiced.

B. Invoice Instructions. Contractor will print each invoice on Contractor’s standard printed bill form, and each invoice will include at least (i) the Agreement number, (ii) a unique invoice number, (iii) Contractor’s name and address, (iv) the nature of the invoiced charge, (v) the total invoiced amount, and (vi) all other details the JCC considers reasonably necessary to permit the JCC to evaluate the Services performed and the Work delivered, including the number of hours worked and the applicable hourly rate (as set forth in the Service and contractor Personnel Rates Table). If requested, Contractor will promptly correct any inaccuracy and resubmit the invoice.

C. Invoice Details. Contractor will submit invoices to the JCC. Each invoice will have a number and will include the following information:

- a) purchase Order or Agreement number ;
- b) service request date, if applicable;
- c) detailed description of service(s), including the following information:
 - i. location where service(s) were performed;
 - ii. description of service(s) performed;
- d) hours billed;
- e) hourly billing rate;
- f) approved reimbursable expenses;
- g) list of materials used, with pricing;
- h) date of service completion;
- i) name and address of contractor;
- j) contractor's federal taxpayer identification number.

Contractor will include all back up documentation and receipts for material costs, associated with each invoice.

D. Required Certification. Contractor must include with any request for reimbursement from the JCC 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 JCC was sought for these costs, and Contractor will provide those records to the Attorney General upon request.

E. Retention Amount. During the implementation phase of this project, ten (10) percent of each invoice shall be withheld by the JCC and the aggregate amount withheld shall be paid to Contractor upon delivery and acceptance by the JCC of the final implementation deliverable required by this Agreement.

END OF EXHIBIT 7

EXHIBIT 8

CONTRACTOR EXPENSE AND TRAVEL REIMBURSEMENT GUIDELINES

The JCC's policy and limits on reimbursable travel-related expenses are listed below.

Lodging – Receipts are required and each day of lodging claimed must be listed separately. Maximum rates are listed below.

1. In-state - Actual costs are reimbursable up to a maximum of:
 - a. \$150 per day in San Francisco county;
 - b. \$140 per day in Alameda, San Mateo and Santa Clara counties;
 - c. \$125 per day in Monterey and San Diego counties;
 - d. \$120 per day in Los Angeles, Orange and Ventura counties;
 - e. \$110 per day for all other counties.
2. Out-of-state – Actual costs are reimbursable with appropriate prior approval.

Meals – Actual costs are reimbursable up to the limits stated below for continuous travel of more than 24 hours.

1. Breakfast – Up to \$6.
2. Lunch – Up to \$10.
3. Dinner – Up to \$18.

For continuous travel of less than 24 hours, actual expenses up to the above limits may be reimbursable if:

1. Travel begins one hour before normal work hours – Breakfast may be claimed.
2. Travel ends one hour after normal work hours – Dinner may be claimed.
3. Lunch may not be claimed on trips of less than 24 hours.

Incidental Expenses – Up to \$6 per day. Incidentals are not reimbursable for one-day trips; they may only be claimed after 24 hours.

Transportation – The actual cost of tickets for air, rail, bus, rental car, or other forms of public transportation is reimbursable. The lowest cost ticket available must be purchased. Receipts are required for rental cars and air travel. For ticketless travel, the traveler's itinerary may be submitted in lieu of a receipt.

1. The actual costs of cab fare, public parking, and tolls are reimbursable. Receipts are required for all expenses of \$3.50 or more.
2. Mileage – Personal vehicle mileage is reimbursable at the current federal mileage reimbursement rate established by the IRS that corresponds to the date(s) of travel.

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Other Business Expenses – Actual cost is reimbursable. Receipts or documentation are required for all other business expenses, regardless of the amount claimed.

END OF EXHIBIT 8

EXHIBIT 9

MAINTENANCE AND SUPPORT

I. ERRORS AND CORRECTION

1. Classification of Errors. “Error” shall mean a defect which causes the Licensed Software not to function substantially in conformance with the Specifications. Errors are classified as follows:

Service Level 1: An Error causing (i) “crashes” of the Licensed Software, (ii) irrecoverable loss or corruption of data or (iii) loss of essential Licensed Software functionality for which there is no documented means of Circumvention. “Circumvention” shall mean, as applied to an Error, a change in operating procedures whereby the JBE can conveniently avoid any deleterious effects of such Error. (A Service Level 1 Error is sometimes referred to as “Urgent”).

Service Level 2: An Error causing (i) recoverable loss or corruption of data, (ii) loss of essential Licensed Software functionality that can be Circumvented in a manner that is documented or easily identified or (iii) loss of non-essential Licensed Software functionality that cannot be Circumvented. (A Service Level 2 Error is sometimes referred to as “Critical”).

Service Level 3: An Error causing (i) loss of non-essential Licensed Software functionality that can be Circumvented in a manner that is documented or easily identified or (ii) difficulties in the user interface. (A Service Level 3 Error is sometimes referred to as “Serious”).

Service Level 4: An Error causing no loss of data or functionality that can conveniently be Circumvented by appropriate JBE action or procedures. (A Service Level 4 Error is sometimes referred to as “Minor”).

2. Error Correction. Contractor acknowledges that Errors in the Licensed Software other than Service Level 3 and 4 Errors are extremely serious and must be resolved with the greatest possible urgency. Therefore, Contractor agrees to correct reported Errors in accordance with the following provisions:

- a) Contractor shall provide the JBEs with names and telephone numbers of Contractor engineering and/or support staff who are to be contacted by the JBE at any time on a seven (7) day a week, twenty-four (24) hours a day basis to report Errors.
- b) Contractor shall provide an initial response to all Errors reported by the JBE support personnel within one (1) clock hour for Service Level 1 or 2 Errors, and within four (4) working hours for Service Level 3 or 4 Errors, and Contractor and the JBE shall promptly agree in good faith what additional information and/or Error documentation will be required to permit Contractor to resolve such Errors.

c) Contractor shall resolve Service Level 1 Errors within one (1) calendar day. Contractor shall resolve Service Level 2 Errors within two (2) working days. Contractor shall use its best efforts to resolve Service Level 3 Errors within five (5) working days. Contractor shall use its best efforts to resolve Service Level 1 and 2 Errors by delivering emergency releases to JCC, shall generally resolve Service Level 3 Errors by documenting a means of Circumvention, and shall resolve Service Level 4 Errors by means of the next regularly scheduled update.

3. Escalation Procedure. In the event Contractor has responded to the JBE's request for corrections to the Licensed Software or for warranty service but has been unable to provide either a permanent or a mutually acceptable temporary resolution within the applicable timeframe as set forth in Sections 1 and 2 of this Exhibit 9, Contractor shall initiate the following escalation procedure:

Escalation Stage 1: Contractor's technicians attempting to correct the situation shall notify the Contractor's Engineering Manager. Upon such notification, Contractor will immediately assign, at Contractor's sole expense, additional resources to include at a minimum one senior-level technician or engineer. Such resources shall be on-site at the JBE's location, or at such location as is appropriate given the nature of the required corrections. For a Service Level 1 or Level 2 situation, the Contractor's Engineering Manager shall notify the JBE at four (4) hour intervals of the status of the situation until the situation is resolved or for the next twenty four (24) hours, whichever occurs first.

Escalation Stage 2: After the previous Stage 1 timeframe, if the situation is still unresolved, the Contractor's Senior Vice President of Engineering shall be notified, and shall assign additional and more experienced or senior technical staff or engineers. For Service Level 1 or Level 2 situations, Contractor's Senior Vice President for Engineering shall contact the JBE at two (2) hour intervals until the situation is resolved.

Escalation Stage 3: If a total of seventy-two (72) hours has elapsed since the initial call of the JBE to Contractor for a Service Level 1 or Level 2 situation and the situation is still unresolved to the JBE's satisfaction, the JCC shall be entitled to receive a five percent (5%) reduction or refund of the annual Maintenance Fee for the current year for each twenty-four (24) hour period that the Licensed Software situation is unresolved, commencing with the date and hour of the instigation of the escalation procedures contained in this Exhibit 9. At the sole discretion of the JCC, this reduction may (i) be applied to any accrued fees due to Contractor hereunder, or (ii) refunded to the JCC in cash or, at the JCC's option, other good funds. In addition to the annual Maintenance Fee refund, after a total of seventy-two (72) hours has lapsed since the date and hour of the instigation of the escalation procedures contained in this Exhibit 9 for a Service Level 1 or Level 2 situation and the situation is still unresolved, at the sole discretion of the JCC, Contractor shall immediately send, at Contractor's sole expense, Contractor's most technically qualified representative to the JBE site and said representative will continue to address and work to remedy the failure, malfunction, defect or nonconformity until such failure, malfunction, defect or

nonconformity is resolved to the satisfaction of the JBE.

II. SERVICE LEVELS

Any cloud-based services, hosted service (including Licensed Software hosted services), or software as a service provided under the Agreement (collectively, the “Hosted Services”) shall, at a minimum, meet the following service levels:

The Hosted Services shall be available twenty-four (24) hours per day, 365 days per year, with an availability of 99.9% as measured on a monthly basis (excluding agreed-upon maintenance downtime).

In addition to its other remedies, in the event that the Hosted Services fail to meet an availability of 99.9% in any calendar month, the JCC will be entitled to a service credit equal to five percent of the monthly Hosted Services fee for each 30 minutes of unavailability below 99.9% in that month. All daily service credits accrued during a month will be aggregated to produce a total credit due for that month. Contractor will provide a report to the JCC by the tenth day of each calendar month detailing the percentage availability of the Hosted Services for the previous month. The report will be in a format, and contain such information, as may be reasonably be required by the JCC.

If the Hosted Services monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), for three (3) or more months in a rolling twelve-month period, the JCC may, in addition to its other remedies, terminate the Agreement for material breach.

END OF EXHIBIT 9

EXHIBIT 10

TRAINING

(Exhibit 10, Training, will incorporate the training requirements set forth in the RFP and will be negotiated by the parties.)

EXHIBIT 11

TRANSITION SERVICES

1. Termination Procedures. Upon any termination of this Agreement, Contractor shall (i) provide all information and assistance necessary to ensure the smooth substitution of the Licensed Software to a suitable replacement software program (the “Substitute Product”) if requested by the JCC, and (ii) provide all assistance necessary to ensure the smooth transition of the Maintenance and Support Services performed by Contractor or Contractor’s subcontractor to the JCC or its designee. Such continuing services and assistance shall be provided to the JCC for a period up to thirty-six (36) months after the effective date of the termination (the “Transition Period”), and may include, upon the JCC’s request, the following services: (i) assign as specifically requested by the JCC all of the rights, title, and interest of Contractor in all orders and subcontracts relating to Contractor’s obligations under this Agreement; (ii) take such action as may be necessary or as directed by the JCC to preserve and protect the work previously performed by Contractor, and any property related to this Agreement in the possession of Contractor in which the JCC has an interest; (iii) continue performance of any work as directed by the JCC in writing, and (iv) take any other steps reasonably required by the JCC with respect to this Contract.

2. Software Support. Contractor understands and agrees that, during the Transition Period, the JCC will be entitled to receive continuing Maintenance and Support Services from Contractor for the Licensed Software, in accordance with the provisions of Exhibit 9 (Maintenance and Support).

3. Transition Fees. Any termination or transition assistance provided by Contractor shall be subject to payment by the JCC at Contractor’s hourly rates as set forth in Contractor’s then-standard rates and charges table. Except as provided in this Exhibit 11, no termination fees of any kind, including but not limited to unrecovered costs or other transition fees shall be payable by the JCC upon or subsequent to the termination of this Agreement.

4. Transition Personnel Requirements. Contractor will make Contractor personnel available on a commercially reasonable basis to assist in the transition from the Licensed Software supported by Contractor’s Maintenance and Support Services, to the Substitute Product, supported by the JCC or the JCC’s designee.

END OF EXHIBIT 11