

(Rev. Dec. 2019)

MASTER AGREEMENT [rev Dec. 2019]

**AGREEMENT
MA-SF202102**

1. In this Master Agreement (“Agreement”), the term “Contractor” refers to **VITAC Corporation** and the term “Establishing Judicial Branch Entity” or “Establishing JBE” refers to the **Judicial Council of California**. This Agreement is entered into between Contractor and the Establishing JBE for the benefit of the Judicial Branch Entities (as defined in Appendix D). Any Judicial Branch Entity that enters into a Participating Addendum with Contractor pursuant to this Agreement is a “**Participating Entity**” (collectively, “Participating Entities”). The Establishing JBE and the Participating Entities are collectively referred to as “JBEs” and individually as “JBE”).

2. This Agreement is effective as of **July 1, 2021** (“Effective Date”) and expires on **June 30, 2024** (“Expiration Date”).
This Agreement includes two consecutive one-year Option Terms to extend through **June 30, 2026**. Each of the two option terms may be exercised at the Judicial Council’s sole discretion.

3. The title of this Agreement is: **Master Agreement for Closed Captioning Services**, pursuant to RFP#BAP 2020-14-DM.
The title listed above is for administrative reference only and does not define, limit, or construe the scope or extent of this Agreement.

4. The parties agree that this Agreement, made up of this coversheet, the appendixes listed below, and any attachments, contains the parties’ entire understanding related to the subject matter of this Agreement, and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writing and all other communications between the parties.

- Appendix A – Services
- Appendix B – Payment Provisions
- Appendix C – General Provisions
- Appendix D – Defined Terms
- Appendix E – Participating Addendum
- Appendix F – Work Order Request Form

ESTABLISHING JBE’S SIGNATURE	CONTRACTOR’S SIGNATURE
Judicial Council of California	CONTRACTOR’S NAME (if Contractor is not an individual person, state whether Contractor is a corporation, partnership, etc., and the state or territory where Contractor is organized) VITAC Corporation
BY (Authorized Signature) 	BY (Authorized Signature) 
PRINTED NAME AND TITLE OF PERSON SIGNING Brian Walsh, Supervisor, Contracts	PRINTED NAME AND TITLE OF PERSON SIGNING 4745F81F86C0478 Doug Karlovits CBDO
DATE EXECUTED 05/20/2021	DATE EXECUTED 5/18/2021
ADDRESS Attn: Procurement Branch Accounting & Procurement Administrative Division 455 Golden Gate Avenue, 6th Floor San Francisco, California 94102-3688	ADDRESS Attn: Ann Cannon 8300 E. Maplewood Ave, Suite 310 Greenwood Village, CO 80111

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APPENDIX A

Services

1. Background, Purpose, and Ordering.

- 1.1 This Agreement sets forth the terms and conditions that apply to Contractor's provision of Work to the JBEs. "Work" shall mean the Services as further described in **Section 2** below. This Agreement does not obligate a JBE to place any orders for Work under this Agreement and does not guarantee Contractor a specific volume of orders.
- 1.2 **The Establishing JBE** and other **Participating Entities** shall have the right to place orders under this Agreement for any of the Work. **A Participating Entity** may place orders for Work by entering into a Participating Addendum with Contractor in the form attached as **Appendix E to this Agreement ("Participating Addendum")**. **For the Establishing JBE, no additional Participating Addendum is necessary**. Pricing for Work shall be in accordance with the prices set forth in this Agreement. After a Participating Addendum has been presented to the Contractor by a Participating Entity, the Contractor shall acknowledge, sign, and perform under the Participating Addendum in a timely manner. Contractor shall provide the Work for each JBE in accordance with the terms of this Agreement and the applicable Participating Addendum.
- 1.3 Each **Participating Addendum** constitutes and shall be construed as a separate, independent contract between Contractor and the Participating Entity signing such Participating Addendum, subject to the following: (i) each Participating Addendum shall be governed by this Agreement, and the terms in this Agreement are hereby incorporated into each Participating Addendum; (ii) the Participating Addendum may not alter or conflict with the terms of this Agreement, or exceed the scope of the Work provided for in this Agreement and where there is a conflict between the Agreement and Participating Addendum, the terms of the Agreement shall take precedence; and (iii) the term of the Participating Addendum may not extend beyond the expiration date of the Agreement. The Participating Addendum and this Agreement shall take precedence over any terms and conditions included on Contractor's invoice or similar document. Contractor shall notify the Establishing JBE within **five (5)** business days of receipt of a Participating Addendum from a Participating Entity. The Contractor shall promptly provide the Establishing JBE with a fully signed copy of each Participating Addendum between the Contractor and a Participating Entity.
- 1.4 The Establishing JBE, or under a Participating Addendum a Participating Entity, may at its option place work orders using VITAC's online ordering system (**<https://order.vitac.com>**) for real-time captions or a customized Work Order Request Form – Appendix F – for offline captioning services, subject to and governed by the terms of the Master Agreement and the Participating Addendum. Any work order that conflicts with or alters any term of the Master Agreement (or the Participating Addendum) or exceeds the scope of the Work provided for in this Agreement, will not

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be deemed part of the contract between Contractor and JBE. Subject to the foregoing, the Participating Addendum shall be deemed to include such Services.

1.5 The JBE signing the Participating Addendum shall be solely responsible for: (i) the acceptance of and payment for the Work under such Participating Addendum; and (ii) its obligations and any breach of its obligations. Any breach of obligations by a JBE shall not be deemed a breach by any other JBE. Under no circumstances shall a JBE have any liability or obligation except pursuant to a Participating Addendum signed by such JBE, nor shall any breach by a JBE under a Participating Addendum give rise to a breach under any other Participating Addendum or be deemed grounds for termination of this Agreement by Contractor. The Establishing JBE shall have no liability or responsibility of any type related to: (i) any other JBE's use of or procurement through this Agreement (including any Participating Addendum), or (ii) such JBE's business relationship with Contractor. The Establishing JBE makes no guarantees, representations, or warranties to any Participating Entity.

1.6 This Agreement is a nonexclusive agreement. Each JBE reserves the right to provide, or have others provide the Work. Contractor shall reasonably cooperate with any third parties retained by a JBE to provide the Work.

2. Services.

2.1 Description of Services. As ordered by each JBE under a Participating Addendum, Contractor shall perform the **offline and real time captioning** for the JBEs:

- A. Contractor is to provide full scale, real-time verbatim closed-captioning services as further described herein ("Services"), to the **Judicial Council of California, the Supreme Court of California, the Courts of Appeal, the Habeas Corpus Resource Center and the 58 Superior Courts of California (the term "trial court" or "appellate court" is used synonymously with "Superior Court" or Court).**
- B. The services will include full scale, real-time verbatim closed captioning of proceedings and other live and pre-recorded meetings, media, and forums.
- C. Captioning services must meet Americans with Disabilities Act requirements.
- D. Contractor shall sign-in to live caption events **at least 10 minutes** prior to the scheduled starting time and shall stay on until its conclusion, even if it runs longer than the scheduled time.
- E. Captioning Services must be performed in the United States and provided by a Contractor who has a presence in the United States.
- F. Contractor must invoice according to specific assignments provided by any resulting Work Order.
- G. Contractor shall bill according to actual duration of services, even if the duration falls over or under the requested duration of Services.

2.2 Description of Deliverables. As ordered by each JBE under a Participating Addendum, Contractor shall deliver to the JBEs the following electronic files containing the captioning:

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- A. Captioning and transcripts must be a word-for-word representation of the project's audio, even if they are grammatically incorrect or the speaker false starts or changes direction mid-sentence.
- 1) The quality of captioning and unedited transcripts must not exceed an error rate of **five percent (5%)** for the duration of live real-time events.
 - 2) The quality of captioning and edited transcripts must not exceed an error rate of **0.1 percent (.1%)** for pre-recorded projects.
 - 3) The accuracy of Captioning Services provided under the Master Agreement will be the sole responsibility of the Contractor. Contractor must explain how accuracy rating is monitored and determined for both captioning and transcripts.

B. Captioning with Unedited Caption Transcript Files.

Contractor must have a fixed hourly rate for Captioning Services that come with unedited captioning transcript, inclusive of .smi or .srt, and .docx (or equivalent) file types. The Contractor must provide, at no additional charge, an unedited captioning transcript which will be emailed to the JBE no later than **one Business Day** after conclusion of live real-time events. Unedited transcripts shall be provided to the JBE, upon request, **up to one (1) year** after the date of the event at no additional cost.

C. Captioning with Edited Caption Transcript Files.

- 1) The Contractor shall provide edited caption transcripts in an accepted file format. Edited caption transcripts must be in the English language. The Contractor must have a fixed hourly rate for Captioning Services that come with edited caption transcripts, inclusive of .smi or .srt and .docx (or equivalent) file types.
- 2) The Contractor may be required to provide edited caption transcripts in Spanish, Vietnamese, Cantonese, Tagalog, and Mandarin, which must be in a required file format. The Contractor must have a fixed hourly rate for Captioning Services that come with edited caption transcripts, by language inclusive of .smi or .srt and .docx (or equivalent) file types.
- 3) Edited caption transcripts and files must be completed and delivered to the JBE within **one (1) business day per hour** of live real-time captioning; or pre-recorded project work.

For example:

Five-hour live real-time captioning event:

5-hour event x 1 Business Day per hour/event = edited caption transcripts due to JBE in 5 Business Days.

- 4) All edited transcripts, inclusive of all file types and languages on the Work Order shall be provided to JBE, upon request, **after the date of the event and for up to one (1) year at no additional cost.**

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- 5) The Contractor must be able to produce edited caption transcripts from unedited caption transcripts for an additional fixed hourly rate, inclusive of .smi/.srt and/or .docx (or equivalent) file type. Requests for this post-event activity will be requested via a customized **Work Order Request Form** and follow timeframes for pre-recorded work projects.
- D. The caption transcripts, both edited and unedited, must be provided in the following professional formats:
- 1) docx format or Microsoft Word manufacturer's current version and two previous versions, and
 - 2) .smi. or .srt, depending on video player requirements.
- E. Usage Tracking Reports: the Contractor is to provide Usage Tracking Reports (UTR) on an ad hoc report basis at no cost, as requested by each JBE. UTR's shall be able to track:
- 1) Number of Work Orders,
 - 2) Accounting Codes utilized by the JBE under the Master Agreement,
 - 3) Amount expended by the JBE under the Master Agreement by the JBE's fiscal year or calendar year,
 - 4) Number of hours of captioned events,
 - 5) Number of hours of captioned events and edited transcripts,
 - 6) Number of hours of captioned pre-recorded events/projects,
 - 7) Names of the events or media captioned and/or edited,
 - 8) Custom reports populated by key-word search, and
 - 9) Number of captioning views (Captioning Viewer Data/Analytics).
- F. The Contractor will be able to complete Work Orders within **three (3) Business Days** of a request via substantially complete Work Order. Both the Contractor and the JBE requesting the Service will strive to provide complete, accurate information and any technical assistance necessary to ensure Work Orders are fulfilled in a timely manner. The Contractor should accommodate Work Order submitted **fewer than three (3) Business Days** prior to the caption event date, if possible.

2.3 Judicial Council Current System and Responsibilities

A. System and Process

Captions are assigned a unique permanent Uniform Resource Locator (URL) that is used for stand-alone captions via browser as well as one that is embedded within the player template in Granicus. The former provides user options for view, display, and copying. The latter pushes the streaming caption words into a section of the player template. Each unique Judicial Council User Group or JBE User Group (User Group) will be assigned a set of permanent URLs by the Contractor. The Contractor will

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create a new set of permanent URLs when a new User Group requires Captioning Services for the first time. The Contractor will monitor real-time live streaming events via a webcast link or conference phone line.

- B. The JBE requesting the Captioning Services will provide or make available to the Contractor the following products and/or services in order to assist Contractor to provide the Captioning Services and the specific deliverables requested:
 - 1) JBE will provide to the Contractor, for real-time, live captioning events a video signal/link or an audio signal via conference phone line(s). JBE may provide a participant list and lexicon in advance of the project
 - 2) For pre-recorded events/projects: JBE may provide a participant list and lexicon in advance of the project.
- C. The accuracy of Captioning Services provided under the Master Agreement will be the sole responsibility of the Contractor; however, the JBE may evaluate and monitor accuracy of captions and transcripts.

2.4 Captioning Requirements

- A. The JBEs do not have a standard software that is utilized throughout the judicial branch and each JBE will determine the software that it elects to use. The Judicial Council uses the software described in **section F** below. In the event the Judicial Council's current system(s) are replaced or upgraded with a new one, Contractor shall ensure that equipment used to close-caption the Events/Projects is compatible with any replaced, upgraded or new unit. Contractor will provide Captioning Services, as requested, to the individual JBEs that utilize a software and equipment that is compatible with the Contractor's services.
- B. The JBEs require that each distinct User Group seeking captioning be assigned a permanent and unique URL address for the caption stream that is dedicated to those projects.
- C. Contractor shall provide Captioning Services in English and Spanish, simultaneously for real-time captions, as requested.
- D. Contractor must provide remote Captioning Services by following a video signal that is streamed live online and an audio signal via telephone line(s).
- E. Contractor must provide captioning to a real-time streaming web page, and to a live caption area within the event streaming page.
- F. Contractor must have the technical compatibility with the Judicial Council's live streaming software in order for the caption stream URL to be inserted into a player template including Granicus, so that live captioning can be viewed within the live stream player during the Event, when accessed from the Judicial Council's event page.
- G. Contractor must be able to provide captioning at the average rate between 225 to 250 words per minute for Events and Projects.
- H. Captions must match the spoken words in the dialogue and convey background noises and other sounds to the fullest extent possible. The Captioner may not paraphrase,

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must use proper spelling, spacing between words, capitalization, and punctuation to the best of their abilities.

- I. Captions must coincide with their corresponding spoken words and sounds to the greatest extent possible and must be displayed on the screen at a speed that can be read by viewers.
- J. Captions must run from the beginning to the end of the program.
- K. We recognize there may be a slight delay in the delivery of captions for live real-time events; however, the delay in the presentation of live captions should be kept to a minimum, consistent with an accurate presentation of what is being said and the overall goal of ensuring that captions enable viewers to follow the event.
- L. The Contactor must provide a high degree of accuracy in Captioning Services; both Events and Projects. Accuracy rate must be **95 percent or greater**. Near-flawless accuracy is of the highest importance. Americans with Disabilities Act guidelines specifically state that persons with disabilities must be given “effective communication that offers full and equal enjoyment.” The quality of information that is provided must be of equal quality to that offered to people without disabilities.
- M. Computer Generated Captioning
 - 1) Live Real-Time Events (referred to as “Events” in Appendix D, Defined Terms): Contractor is not authorized to use speech recognition or computer captioning software in fulfilling live, real-time event Work Order requests.
 - 2) Project (non-Live/pre-recorded Real-Time Events, referred to as “Projects” in Appendix D, Defined Terms): Contractor is authorized to use speech recognition or computer captioning software in fulfilling pre-recorded Work Orders, and the accuracy rate must be 99.9 percent.

2.5 Key Personnel

A. Captioner

- 1) Contractor’s staff providing live, real-time captioning services must hold a current certification from Certified CART Providers or Certified Broadcast Captioners, or other institutions that meet the standards of the National Court Reporters Association (<http://www.ncra.org>).
- 2) Contractor shall schedule captioners with five or more years of live, real-time captioning experience and familiarity with legal terminology, whenever possible, and when criteria cannot be met, Contractor shall choose captioners most-qualified to meet JCC’s captioning needs.
- 3) The Contractor will maintain a list of Captioners that provide both: 1) satisfactory and 2) unsatisfactory Captioning Services, according to feedback from the JBEs. The Contractor may not utilize Captioners placed on the “unsatisfactory Captioning Services” list to fulfill future JBE Work Orders under the Master Agreement.

B. Account Manager

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During the term of the Master Agreement, Contractor must provide an Account Manager to manage requirements of the Master Agreement, oversee and coordinate captioning requests, receive billing inquiries, assist in billing dispute resolution, and be responsive to any technical or customer service needs that arise.

The Account Manager will be responsible for responding in a timely manner to complaints or other notices or advice regarding inaccuracies in closed captioning. Contractor must be able to provide on-call technical support during live caption events; and Account Manager shall be available during conventional business hours, generally between **8:00 a.m. and 5:00 p.m.** Pacific Time, **Monday through Friday**. A back-up or secondary Account Manager is preferred if the primary Account Manager is not available.

2.6 Ordering Process

- A. The JBE may assign User Groups according to Accounting Codes.
- B. Each JBE, and in the case of the Judicial Council, each User Group is responsible for submission of their own Work Order for Captioning Services. The Account Manager will work with the contact on each Work Order to troubleshoot, clarify any requests, and ensure a complete Work Order is submitted.
- C. The Contractor will fulfill requests for Captioning Services within **three (3) Business Days** of the request via a Work Order. All completed Work Orders will meet the requirements of this Master Agreement.
- D. Work Order should be submitted by the JBEs to Contractor via VITAC's online ordering system (<https://order.vitac.com>) for real-time captions or a customized Work Order Request Form sent to VITAC's contract person, Ann Cannon (ann.cannon@vitac.com) for offline captioning services. **Appendix F, provided by the Establishing JBE, can be customized by Participating JBEs based on their user group IDs, accounting codes, and service needs.**
 - I. The JBE will provide the following information in the customized Work Order Request forms:
 1. JBE User Group and Accounting Code;
 2. JBE contact for Work Order;
 3. Date Work Order submitted to Contractor;
 4. Designation of live, real-time event or pre-recorded project;
 5. Date of requested service;
 6. Name of event;
 7. Event date and scheduled run-time (live, real-time events); or run-time for pre-recorded projects;
 8. Indication if the Work Order request is standard (more than three Business Days before the event); or urgent (three or less Business Days before the event);
 9. Language(s) for captions:
 - a. **English,**

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- b. Spanish,**
- c. Vietnamese,**
- d. Cantonese,**
- e. Tagalog, and/or**
- f. Mandarin;**

10. File type(s) required:
 - a. .docx format or Microsoft Word manufacturer's current version and two previous versions,
 - b. .smi format
 - c. .srt format
11. Type of captioning transcription and editing requested:
 - a. Captioning live, real-time; unedited caption transcript,
 - b. Captioning live, real-time; edited caption transcript,
 - c. Captioning pre-recorded event,
 - d. Captioning transcript; post-event, unedited, or
 - e. Captioning transcript; post-event, edited;
12. Authorized Signature (hard-copy signature or email from signatory);
13. The JBE may email Contractor a participant list and lexicon in advance of the event; and
14. Notes or comments to Contractor.

II. The Contractor's account manager will provide the following information:

1. Acknowledgement of receipt of Work Order **within one Business Day**;
2. Confirmation of:
 - a. Event date and time,
 - b. Language(s) of captioning,
 - c. Files to be provided at conclusion of the event/project, and
 - d. Due date in compliance with agreement;
3. Check box indicating Captioner is not on the "unsatisfactory captioning services" list;
4. Unique identifier of Captioner assigned to event/project; and
5. Notes, comments, or clarifications needed from requestor .

2.7 Acceptance Criteria. The Services and Deliverables must meet the following acceptance criteria or the JBE may reject the applicable Services or Deliverables. The JBE may use the attached Acceptance and Signoff Form (Attachment 1) to notify Contractor of the acceptance or rejection of the Services and Deliverables. **Contractor will not be paid for any rejected Services or Deliverables.** The ordering JBE shall inspect the captioning files within 10 days of delivery.

2.8 The Judicial Council's Captioning Needs. The Judicial Council has estimated its requirements for Captioning Services to be up to, but not limited to, **150 hours** of Captioning Services for each one-year period. Distribution of these hours over the calendar year will be

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variable and generally, unpredictable. This estimate does not include potential Captioning Services for the other JBEs. An example of the Judicial Council's captioning needs in 2021 is provided below. Note that the contract period will begin July 2021, and prior dates serve to illustrate an annual example only.

Supreme Court events: Note that these are reserved dates. As the events get closer the Supreme Court usually reduces the days down from 5 days to 3, 2, or 1 day of oral argument and captioning is typically 6 hours/day.

January 4-8, 2021
February 1-5, 2021
March 1-5, 2021
April 5-9, 2021
May 3-7, 2021
May 17-21, 2021
June 1-4, 2021
September 7-10, 2021
October 4-8, 2021
November 1-5, 2021
December 6-10, 2021

Judicial Council events: (Note that these usually only need captioning on one of the reserved days for 2-5 hours.)

January 21-22, 2021
March 11-12, 2021
May 20-21, 2021
July 8-9, 2021
September 30-October 1, 2021
November 18-19, 2021

2.9 Project Managers. Each JBE may designate a project manager. The Establishing JBE's project manager is: **Amber Lee Barnett**. A JBE may change its project manager at any time upon notice to Contractor without need for an amendment to this Agreement. Contractor's project manager is: **Ann Cannon**. Subject to written approval by the Establishing JBE, Contractor may change its project manager without need for an amendment to this Agreement.

2.10 Service Warranties. **Contractor warrants to the JBEs that: (i) the Services will be rendered with promptness and diligence and will be executed in a workmanlike manner, in accordance with the practices and professional standards used in well-managed operations performing services similar to the Services; and (ii) Contractor will perform the Services in the most cost-effective manner consistent with the required level of quality and performance. Contractor warrants that each Deliverable and the Services will conform to the requirements of this Agreement and all applicable specifications and documentation. The foregoing warranty shall commence upon the JBE's acceptance of such Deliverable or Service and shall continue for a period of one (1) year following acceptance. In the event any Deliverable or Service does not conform to the foregoing warranty, Contractor shall promptly correct all nonconformities to the satisfaction of the JBE.**

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2.11 Resources. Contractor is responsible for providing any and all facilities, materials and resources (including personnel, equipment, tools and software) necessary and appropriate for performance of the Services and to meet Contractor's obligations under this Agreement.

2.12 Commencement of Performance. This Agreement is of no force and effect until signed by both parties and all Establishing JBE-required approvals are secured. Any commencement of performance prior to Agreement approval (and approval by a JBE of a Participating Addendum) shall be at Contractor's own risk.

2.13 Stop Work Orders.

A. Each JBE may, at any time, by Notice to Contractor, require Contractor to stop all or any part of the Work being provided to such JBE for a period up to ninety (90) days after the Notice is delivered to Contractor, and for any further period to which the JBE and the Contractor may agree ("Stop Work Order"). The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this provision. Upon receipt of the Stop Work Order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Stop Work Order during the period of stoppage. Within ninety (90) days after a Stop Work Order is delivered to Contractor, or within any extension of that period to which the parties shall have agreed, the JBE shall either (i) cancel the Stop Work Order; or (ii) terminate the Work covered by the Stop Work Order as provided for in this Agreement.

B. If a Stop Work Order issued under this provision is canceled or the period of the Stop Work Order or any extension thereof expires, Contractor shall resume the performance of the Work. The JBE shall make an equitable adjustment in the delivery schedule and the Participating Addendum shall be modified, in writing, accordingly, if:

- i. The Stop Work Order results in an increase in the time required for performance of any part of the Participating Addendum; and
- ii. Contractor requests an equitable adjustment within thirty (30) days after the end of the period of stoppage.

C. The JBEs shall not be liable to Contractor for loss of profits because of a Stop Work Order issued under this provision.

3. Acceptance or Rejection. All Services, and Deliverables are subject to acceptance by each JBE. The JBE may reject any Services or Deliverables that (i) fail to meet applicable requirements or specifications, including acceptance criteria, (ii) are not as warranted, or (iii) are performed or delivered late (without prior consent by the JBE). If the JBE rejects any Service, or Deliverable (other than for late performance or delivery), Contractor shall modify such rejected Service, or Deliverable at no expense to the JBE to correct the relevant deficiencies and shall redeliver such Service, or Deliverable to the JBE within ten (10) business days after the JBE's rejection, unless otherwise agreed in writing by the JBE. Thereafter, the parties shall repeat the process set forth in this section until the JBE accepts such corrected Service, or Deliverable. The JBE may terminate the portion of the Participating Addendum that relates to a rejected Service, or Deliverable at no expense to the JBE if the

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JBE rejects that Service, or Deliverable (i) for late performance or delivery, or (ii) on at least two (2) occasions for other deficiencies.

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**ATTACHMENT 1
ACCEPTANCE AND SIGNOFF FORM**

Description of Services or Deliverables provided by Contractor:

Date submitted to the JBE: _____

The Services or Deliverables are:

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

2) Complete: yes no. If no, please identify incomplete aspects of the Services or Deliverables.

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

Please note level of satisfaction:

Poor Fair Good Very Good Excellent

Comments, if any:

The Services or Deliverables listed above are accepted.

The Services or Deliverables listed above are rejected.

Name: _____

Title: _____

Name of JBE: _____

Date: _____

END OF ATTACHMENT

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APPENDIX B

Payment Provisions

1. General. Subject to the terms of this Agreement, Contractor shall invoice the JBE, and the JBE shall compensate Contractor, as set forth in this Appendix B. The amounts specified in this Appendix shall be the total and complete compensation to be paid to Contractor for its performance under this Agreement. Contractor shall bear, and the JBE shall have no obligation to pay or reimburse Contractor for, any and all other fees, costs, profits, taxes or expenses of any nature that Contractor incurs.

2. Compensation for Services.

2.1 Amount. Contractor will invoice the following amounts for Services or Deliverables that the JBE has accepted:

- A. Fixed hourly rate for Captioning Services that come with unedited captioning transcript, inclusive of .smi/.srt and .docx (or equivalent) file types as specified in **Table 2** below.
- B. Fixed hourly rate for Captioning Services that come with edited caption transcripts, inclusive of .smi/.srt and .docx (or equivalent) file types as specified in **Table 2** below.
- C. Fixed hourly rate for Captioning Services that come with edited caption transcripts, by language inclusive of .smi/.srt and .docx (or equivalent) file types as specified in **Table 1** below.
- D. Additional fixed hourly rate at \$275 to produce edited caption transcripts from unedited caption transcripts, inclusive of .smi/.srt and/or.docx (or equivalent) file type, as specified in **Table 2** below.
- E. Contractor must submit its fees for Closed Captioning Services based on the target language in **Table 1** below:

Table 1: Rates for Closed Captioning Services - Initial 3 Year Term and the 2 options Terms

Language(s) for Captions	Rate for Captioning Services – Unedited Captioning Transcript (inclusive of .smi, and .docx (or equivalent file types.) Fixed Hourly Rate	Rate for Captioning Services – Edited Caption Transcript (inclusive of .smi, and .docx (or equivalent file types.) Fixed Hourly Rate
English	\$103	RT: \$103 + Edit: \$287= \$390
Cantonese	N/A	\$25 per minute
Mandarin	N/A	\$19 per minute
Spanish	N/A	\$16 per minute
Tagalog	N/A	\$25 per minute
Vietnamese	N/A	\$25 per minute

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- F. Contractor must submit its fees for Closed Captioning Services based on Type of Captioning Transcription and Editing Requested in Table 2, below.

Table 2: Rates for Closed Captioning Services - Initial 3 Year Term and the 2 options Terms

Type of Captioning Transcription and Editing Requested	Rate for Captioning Services – Unedited Captioning Transcript (inclusive of .smi/.srt and .docx (or equivalent file types.))	Rate for Captioning Services – Edited Caption Transcript (inclusive of .smi/.srt and .docx (or equivalent file types.))	Rate for Captioning Services – Edited Caption Transcript (by language inclusive of .smi/.srt and .docx (or equivalent file types.))	Rate for Captioning Services – Unedited Captioning Transcript (inclusive of .smi/.srt and .docx (or equivalent file types.))
	Fixed Hourly Rate	Fixed Hourly Rate	Fixed Hourly Rate	Fixed Hourly Rate
Captioning live, real-time; unedited caption transcript	\$97.33	N/A	N/A	Real-time English to Spanish translation and Captioning: \$305
Captioning live, real-time; edited caption transcript	N/A	RT: \$97.33 + Edit: \$275 = \$373.33	N/A	N/A
Captioning pre-recorded event	N/A	English Edited: \$275	N/A	N/A
Captioning transcript; post-event, unedited	No charge	N/A	N/A	N/A
Captioning transcript; post-event, edited	N/A	English Edited: \$275	Pre-recorded English to Spanish: \$480	N/A

***File Reformats will remain \$35 per hour of content**

2.2 No Advance Payment. The JBEs will not make any advance payments.

- 3 Expenses.** Except as set forth in this section, no other expenses relating to the Services, and Deliverables shall be reimbursed by the JBEs.

4 Invoicing and Payment

4.1 Invoicing.

- A. Contractor shall submit invoices to the JBE in arrears no more frequently than monthly. Contractor's invoices must include information and supporting documentation acceptable to the JBE. Each invoice must be printed on Contractor's standard printed bill form, and must include at a minimum (i) the Work Order Confirmation number (ii) appropriate Accounting Code per Work Order, (iii) Contractor's name and remit address, (iv) complete description of services, (v) service dates and times, (vi) quantity of hours captioned (vii) the total invoiced amount, and (viii) such detail as is reasonably necessary to permit JBE to evaluate

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the Work provided, including without limitation the number of hours worked and the applicable hourly rate. Contractor shall adhere to reasonable billing guidelines issued by the JBE from time to time.

- B. The Contractor will invoice each JBE that participates in the Master Agreement separately per Work Order, in full. The Judicial Council requires that the Contractor invoice each Judicial Council User Group according to Accounting Code per Work Order, in full. Partial or progress payments are not allowable under the Master Agreement.
- C. Events that are cancelled with 24 hours or more advance notice are not billed. The Contractor will invoice **in quarter-hour increments**. Portions of one-hour will be prorated from the fixed hourly rate. Payment will be made in quarter-hour increments.

4.2 Payment.

- A. Each JBE will pay for satisfactorily completed Events/Projects in Substantial Compliance with the terms set forth in the Master Agreement and applicable Participating Addendum including, but not limited to: accuracy requirements, electronic delivery of files (e.g. .smi/.srt and .docx files), requested languages provided, and captioning was not completed by a Captioner on the “unsatisfactory Captioning Services” list. Notwithstanding any provision to the contrary, payments to Contractor are contingent upon the timely and satisfactory performance of Contractor’s obligations.
- B. Contractor will revise Unsatisfactory Work Product to be substantially compliant with the Master Agreement and applicable Participating Addendum, **at no extra charge**. Upon receipt of Satisfactory Work Product, the JBE will authorize payment.
- C. Any portion of live event captions that are missed by Contractor shall be provided by the Contractor after event conclusion following the same timeline as edited transcripts, **at no additional cost** to the JBE.
- D. The JBE is entitled to reduced costs for late transcript files as follows:
 - 1) If files are received one business day after their due date, cost for captioning services shall be **discounted 15 %**.
 - 2) If files are received two business days after their due date, cost for captioning services shall be **discounted 25 %**.
 - 3) If files are received three or more business days after their due date, cost for captioning services shall be provided **at no cost**.
- E. Contractor must accept a check as a form of payment based on invoices with corresponding Work Orders for services rendered.
- F. The JBEs will not pay late fees; standard business payment terms are **net sixty (60) days**.
- G. During the term of the Master Agreement, the Contractor will maintain the level of accuracy of Captioning Services provided under the Master Agreement at not less

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than **95 percent** accuracy. Failure to comply with this standard may be grounds for damages and/or termination.

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

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

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APPENDIX C

General Provisions

1. Provisions Applicable to Services

1.1 Qualifications. Contractor shall assign to this project only persons who have sufficient training, education, and experience to successfully perform Contractor's duties. If a JBE is dissatisfied with any of Contractor's personnel, for any or no reason, Contractor shall replace them with qualified personnel with respect to such JBE.

1.2 Turnover. Contractor shall endeavor to minimize turnover of personnel Contractor has assigned to perform Services.

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

2.1 Authority. Contractor has authority to enter into and perform its obligations under this Agreement and any Participating Addendum, and Contractor's signatory has authority to bind Contractor to this Agreement and any Participating Addendum.

2.2 Not an Expatriate Corporation. Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC 10286.1, and is eligible to contract with the JBEs.

2.3 No Gratuities. Contractor has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Judicial Branch Personnel with a view toward securing this Agreement (or any Participating Addendum) or securing favorable treatment with respect to any determinations concerning the performance of this Agreement (or any Participating Addendum).

2.4 No Conflict of Interest. Contractor has no interest that would constitute a conflict of interest under PCC sections 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.

2.5 No Interference with Other Contracts. To the best of Contractor's knowledge, this Agreement and any Participating Addendum does not create a material conflict of interest or default under any of Contractor's other contracts.

2.6 No Litigation. No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect Contractor's ability to perform its obligations.

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- 2.7 Compliance with Laws Generally.** Contractor complies with all laws, rules, and regulations applicable to Contractor's business and its obligations under this Agreement and any Participating Addendum.
- 2.8 Drug Free Workplace.** Contractor provides a drug free workplace as required by California Government Code sections 8355 through 8357.
- 2.9 No Harassment.** Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of this Agreement (and any Participating Addendum), and Contractor takes all reasonable steps to prevent harassment from occurring.
- 2.10 Noninfringement.** The Goods, Services, Deliverables, and Contractor's performance under this Agreement (and any Participating Addendum) do not infringe, or constitute an infringement, misappropriation or violation of, any third party's intellectual property right.
- 2.11 Nondiscrimination.** Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California's Fair Employment and Housing Act (Government Code sections 12990 et seq.) and associated regulations (Code of Regulations, title 2, sections 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor will notify in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor's obligations of nondiscrimination.
- 2.12 National Labor Relations Board Orders.** No more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.

3. Insurance

- 3.1 Basic Coverage.** Contractor shall provide to each JBE and maintain at the Contractor's expense the following insurance during the Term:
- A. Commercial General Liability.** The policy must be at least as broad as the Insurance Services Office (ISO) Commercial General Liability "occurrence" form, with coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. The policy must provide limits of at least \$1,000,000 per occurrence and annual aggregate.
- B. Workers Compensation and Employer's Liability.** The policy is required only if Contractor has employees. The policy must include workers' compensation to meet minimum requirements of the California Labor Code, and it must provide

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coverage for employer's liability bodily injury at minimum limits of \$1,000,000 per accident or disease.

- C. *Automobile Liability.* This policy is required only if Contractor uses an automobile or other vehicle in the performance of this Agreement. The policy must cover bodily injury and property damage liability and be applicable to all vehicles used in Contractor's performance of this Agreement whether owned, non-owned, leased, or hired. The policy must provide combined single limits of at least \$1,000,000 per occurrence.
 - D. *Professional Liability.* This policy is required only if Contractor performs professional services under this Agreement. The policy must cover liability resulting from any act, error, or omission committed in Contractor's performance of Services under this Agreement, at minimum limits of \$1,000,000 per occurrence and annual aggregate. If the policy is written on a "claims made" form, Contractor shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the termination and acceptance of all Services provided under this Agreement. The retroactive date or "prior acts inclusion date" of any such "claims made" policy must be no later than the date that activities commence pursuant to this Agreement.
- 3.2 Umbrella Policies.** Contractor may satisfy basic coverage limits through any combination of basic coverage and umbrella insurance.
- 3.3 Aggregate Limits of Liability.** The basic coverage limits of liability may be subject to annual aggregate limits. If this is the case the annual aggregate limits of liability must be at least two (2) times the limits required for each policy, or the aggregate may equal the limits required but must apply separately to this Agreement.
- 3.4 Deductibles and Self-Insured Retentions.** Contractor shall declare to each JBE all deductibles and self-insured retentions that exceed \$100,000 per occurrence. Any increases in deductibles or self-insured retentions that exceed \$100,000 per occurrence are subject to each JBE's approval. Deductibles and self-insured retentions do not limit Contractor's liability.
- 3.5 Additional Insured Endorsements.** Contractor's commercial general liability policy, automobile liability policy, and, if applicable, umbrella policy must be endorsed to name the following as additional insureds with respect to liabilities arising out of the performance of this Agreement: the Establishing JBE, the State of California, the Participating Entities, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees).
- 3.6 Certificates of Insurance.** Before Contractor begins performing Services, Contractor shall give the Establishing JBE (and on request, any Participating Entity) certificates of insurance attesting to the existence of coverage. Contractor shall provide prompt written notice to the Establishing JBE and any Participating Entity in the event that insurance coverage is cancelled or materially changed from the coverage set forth in the current certificate of insurance provided to the Establishing JBE and Participating Entities.

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- 3.7 Qualifying Insurers.** For insurance to satisfy the requirements of this section, all required insurance must be issued by an insurer with an A.M. Best rating of A - or better that is approved to do business in the State of California.
- 3.8 Required Policy Provisions.** Each policy must provide, as follows: (i) the policy is primary and noncontributory with any insurance or self-insurance maintained by Judicial Branch Entities and Judicial Branch Personnel, and the basic coverage insurer waives any and all rights of subrogation against Judicial Branch Entities and Judicial Branch Personnel; (ii) the insurance applies separately to each insured against whom a claim is made or a lawsuit is brought, to the limits of the insurer's liability; and (iii) each insurer waives any right of recovery or subrogation it may have against the Establishing JBE, any Participating Entity, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees for loss or damage.
- 3.9 Partnerships.** If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either (i) separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or (ii) joint insurance program with the association, partnership, or other joint business venture included as a named insured.
- 3.10 Consequence of Lapse.** If required insurance lapses during the Term, the JBEs are not required to process invoices after such lapse until Contractor provides evidence of reinstatement that is effective as of the lapse date.
- 4. Indemnity.** Contractor will defend (with counsel satisfactory to the JBE or its designee), indemnify and hold harmless the Judicial Branch Entities and the Judicial Branch Personnel against all claims, losses, and expenses, including attorneys' fees and costs, that arise out of or in connection with: (i) a latent or patent defect in any Goods; (ii) an act or omission of Contractor, its agents, employees, independent contractors, or subcontractors in the performance of this Agreement; (iii) a breach of a representation, warranty, or other provision of this Agreement or any Participating Addendum; and (iv) infringement of any trade secret, patent, copyright or other third party intellectual property. This indemnity applies regardless of the theory of liability on which a claim is made or a loss occurs. This indemnity will survive the expiration or termination of this Agreement or any Participating Addendum, and acceptance of any Goods, Services, or Deliverables. Contractor shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement that would bind an indemnified party, without the affected 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. **NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL CONTRACTOR BE LIABLE TO THE JBES FOR A CUMULATIVE AMOUNT THAT EXCEEDS THE AMOUNT PAID TO CONTRACTOR FOR ITS SERVICES IN THE SIX (6) MONTH PERIOD PRIOR TO THE DATE OF THE EVENT GIVING RISE TO SUCH DAMAGES.**

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5. **Option Term.** The Establishing JBE may, at its sole option, extend this Agreement for **two** consecutive one-year terms. In order to exercise this Option Term, the Establishing JBE must send Notice to Contractor at least thirty (30) days prior to the end of the Initial Term. The exercise of an Option Term will be effective without Contractor's signature.
6. **Tax Delinquency.** Contractor must provide notice to the JBEs immediately if Contractor has reason to believe it may be placed on either (i) the California Franchise Tax Board's list of 500 largest state income tax delinquencies, or (ii) the California Board of Equalization's list of 500 largest delinquent sales and use tax accounts. The Establishing JBE may terminate this Agreement immediately "for cause" pursuant to Section 7.2 below (and each JBE may terminate its Participating Addendum immediately "for cause" pursuant to Section 7.2 below) if (i) Contractor fails to provide the notice required above, or (ii) Contractor is included on either list mentioned above.

7. Termination

- 7.1 **Termination for Convenience.** The Establishing JBE may terminate, in whole or in part, this Agreement (and a JBE may terminate, in whole or in part, a Participating Addendum) for convenience upon thirty (30) days prior Notice. After receipt of such Notice, and except as otherwise directed by the Establishing JBE (and regarding a Participating Addendum, except as otherwise directed by the JBE), Contractor shall immediately: (a) stop Services (or development of Deliverables) as specified in the Notice; and (b) stop the delivery or manufacture of Goods as specified in the Notice.
- 7.2 **Termination for Cause.** The Establishing JBE may terminate this Agreement, in whole or in part, immediately "for cause" (and a JBE may terminate a Participating Addendum, in whole or in part, immediately "for cause"): if (i) Contractor fails or is unable to meet or perform any of its duties under this Agreement or a Participating Addendum, and this failure is not cured within twenty (20) days following Notice of default (or in the opinion of the JBE, is not capable of being cured within this cure period); (ii) Contractor or Contractor's creditors file a petition as to Contractor's bankruptcy or insolvency, or Contractor is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, goes into liquidation or receivership, or otherwise loses legal control of its business; or (iii) Contractor makes or has made under this Agreement (or any Participating Addendum) any representation, warranty, or certification that is or was materially incorrect, or inaccurate, or misleading to the detriment of Establishing JBE or Participating JBE. Contractor may also terminate this Agreement or any Participating Addendum "for cause" for nonpayment of Contractor's fees or other breach of this Agreement or any Participating Addendum or lack of budget funding to support this Agreement.
- 7.3 **Termination upon Death.** This entire Agreement will terminate immediately without further action of the parties upon the death of a natural person who is a party to this Agreement, or a general partner of a partnership that is a party to this Agreement.
- 7.4 **Termination for Changes in Budget or Law.** Contractor understands that each JBE's payment obligations are subject to annual appropriation and the availability of funds; however, no JBE shall request Work from Contractor without the requisite availability

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of funds to pay for Work to be performed. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of this Agreement or Participating Addendum. Funding beyond the current appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement (including a Participating Addendum). The Establishing JBE may terminate this Agreement (and any JBE may terminate a Participating Addendum), and each JBE may limit Contractor's Work that it requests upon Notice to Contractor without prejudice to any right or remedy of the JBEs if: (i) expected or actual funding to compensate Contractor is withdrawn, reduced or limited; or (ii) the Establishing JBE determines that Contractor's performance under this Agreement (or a JBE determines that Contractor's performance under a Participating Addendum) has become infeasible due to changes in applicable laws.

7.5 Rights and Remedies.

- A. *Nonexclusive Remedies.*** All remedies provided in this Agreement may be exercised individually or in combination with any other available remedy. Contractor shall notify the Establishing JBE and the affected Participating Entities immediately if Contractor is in default, or if a third-party claim or dispute is brought or threatened that alleges facts that would constitute a default under this Agreement (or a Participating Addendum). If Contractor is in default: (i) a JBE may withhold all or any portion of a payment otherwise due to Contractor, and exercise any other rights of setoff as may be provided in this Agreement; (ii) a JBE may require Contractor to enter into nonbinding mediation; (iii) the Establishing JBE may exercise, following Notice, the Establishing JBE's right of early termination of this Agreement (and a JBE may exercise its right of early termination of a Participating Addendum) as provided herein; and (iv) a JBE may seek any other remedy available at law or in equity.
- B. *Replacement.*** If the Establishing JBE terminates this Agreement (or if a JBE terminates a Participating Addendum) in whole or in part for cause, the JBE may acquire from third parties, under the terms and in the manner the JBE considers appropriate, goods or services equivalent to those terminated, and Contractor shall be liable to the JBE for any excess costs for those goods or services. Notwithstanding any other provision, in no event shall the excess cost to the JBEs for such goods and services be excluded as indirect, incidental, special, exemplary, punitive or consequential damages of the JBEs. Contractor shall continue any Work not terminated.
- C. *Delivery of Materials.*** In the event of any expiration or termination of this Agreement (or a Participating Addendum), Contractor shall promptly provide the applicable JBE or JBEs with all originals and copies of the Deliverables for such JBE, including any partially completed Deliverables-related work product or materials, and any JBE-provided materials in its possession, custody, or control. In the event of any termination of this Agreement or Participating Addendum, the JBEs shall not be liable to Contractor for compensation or damages incurred as a result of such termination except that cancellation of any services within 48 hours of scheduled performance will be billed to the contracting JBE at Contractor's regular rate as if the services had been performed as scheduled.

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D. Participating Addenda. The termination of this Agreement shall not result in the termination of any outstanding Participating Addendum that has not been terminated by a JBE, and this Agreement shall continue to apply to any such Participating Addendum until such time as all Work under such Participating Addendum has been completed by its terms or is terminated as provided in this Section 7; provided, however, that the term of such Participating Addendum may not exceed the expiration date of this Agreement. Issuance and acknowledgement of any Participating Addendum (as evidenced by the JBE's and Contractor's signature on the Participating Addendum) must be completed before the termination or expiration of this Agreement.

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

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

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

If to Contractor:	If to the Establishing JBE:
<u>Attn: Ann Cannon, Vice President of Sale</u> <u>8300 E. Maplewood Ave, Suite 310</u> <u>Greenwood Village, CO 80111</u> <u>With a copy to: ann.cannon@vitac.com</u>	<u>Judicial Council Contracts Supervisor</u> <u>455 Golden Gate Avenue, 6th Floor</u> <u>San Francisco, California 94102-3688</u> <u>With a copy to: Brian.Walsh@jud.ca.gov</u>

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

10. Provisions Applicable to Certain Agreements. The provisions in this section are applicable to this Agreement and to any Participating Addendum, provided, however that if this Agreement or a Participating Addendum is not of the type described in the first sentence of a subsection, then that subsection does not apply to this Agreement or such Participating Addendum.

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- 10.1 Union Activities Restrictions.** *If the Contract Amount is over \$50,000, this section is applicable.* Contractor agrees that no JBE funds received under this Agreement or any Participating Addendum will be used to assist, promote or deter union organizing during the Term. If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no JBE funds were used for those expenditures. Contractor will provide those records to the Attorney General upon request.
- 10.2 Domestic Partners, Spouses, Gender, and Gender Identity Discrimination.** *If the Contract Amount is \$100,000 or more, this section is applicable.* Contractor is in compliance with, and throughout the Term will remain in compliance with: (i) PCC 10295.3, which places limitations on contracts with contractors who discriminate in the provision of benefits on the basis of marital or domestic partner status; and (ii) PCC 10295.35, which places limitations on contracts with contractors that discriminate in the provision of benefits on the basis of an employee's or dependent's actual or perceived gender identity.
- 10.3 Child Support Compliance Act.** *If the Contract Amount is \$100,000 or more, this section is applicable.* Contractor recognizes the importance of child and family support obligations and fully complies with (and will continue to comply with during the Term) all applicable state and federal laws relating to child and family support enforcement, including disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq. Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- 10.4 Priority Hiring.** *If the Contract Amount is over \$200,000 and this Agreement is for services (other than Consulting Services), this section is applicable.* Contractor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with PCC 10353.
- 10.5 Iran Contracting Act.** *If the Contract Amount is \$1,000,000 or more and Contractor did not provide to the Establishing JBE an Iran Contracting Act certification as part of the solicitation process, this section is applicable.* Contractor certifies either (i) it is not on the current list of persons engaged in investment activities in Iran ("Iran List") created by the California Department of General Services pursuant to PCC 2203(b), and is not a financial institution extending \$20,000,000 or more in credit to another person, for forty-five (45) days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the Iran List, or (ii) it has received written permission from the Establishing JBE to enter into this Agreement (and written permission from each JBE to enter into the applicable Participating Addendum) pursuant to PCC 2203(c).
- 10.6 Federal Funding Requirements.** *If this Agreement (or a Participating Addendum) is funded in whole or in part by the federal government, this section is applicable.* It is mutually understood between the parties that this Agreement (or a Participating Addendum) may have been written for the mutual benefit of both parties (or

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Participating Entities) before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if this Agreement (or a Participating Addendum) were executed after that determination was made. This Agreement (or a Participating Addendum) is valid and enforceable only if sufficient funds are made available to the Establishing JBE (or the applicable Participating Entity) by the United States Government for the fiscal year in which they are due and consistent with any stated programmatic purpose, and this Agreement (or a Participating Addendum) is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this Agreement (or a Participating Addendum) in any manner. The parties mutually agree that if the Congress does not appropriate sufficient funds for any program under which this Agreement (or a Participating Addendum) is intended to be paid, this Agreement (or Participating Addendum) shall be deemed amended without any further action of the parties to reflect any reduction in funds. The Establishing JBE may invalidate this Agreement (and a JBE may invalidate a Participating Addendum) under the termination for convenience or cancellation clause (providing for no more than thirty (30) days' Notice of termination or cancellation), or amend this Agreement (or Participating Addendum) to reflect any reduction in funds.

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

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

11. Miscellaneous Provisions.

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- 11.1 Independent Contractor.** Contractor is an independent contractor to the JBEs. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor and the JBEs. Contractor has no authority to bind or incur any obligation on behalf of the JBEs. If any governmental entity concludes that Contractor is not an independent contractor, the Establishing JBE may terminate this Agreement (and a JBE may terminate a Participating Addendum) immediately upon notice.
- 11.2 GAAP Compliance.** Contractor shall maintain an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles.
- 11.3 Audit.** Contractor must allow the JBEs or their designees to remotely review and audit Contractor's (and any subcontractors') documents and records specifically relating to this Agreement (including any Participating Addendum), and Contractor (and its subcontractors) shall retain such documents and records for a period of two (2) years following final payment under this Agreement; provided that JBE's audit of said documents and records does not include access to data or information of Contractor's other captioning service clients. If an audit determines that Contractor (or any subcontractor) is not in compliance with this Agreement (including any Participating Addendum), Contractor shall correct errors and deficiencies by the twentieth (20th) day of the month following the review or audit. If an audit determines that Contractor has overcharged the JBE five percent (5%) or more during the time period subject to audit, Contractor must reimburse the JBE in an amount equal to the cost of such audit. This Agreement (and any Participating Addendums) are subject to examinations and audit by the State Auditor for a period of three (3) years after final payment.
- 11.4 Licenses and Permits.** Contractor shall obtain and keep current all necessary licenses, approvals, permits and authorizations required by applicable law for the performance of the Services (including Deliverables) or the delivery of the Goods. Contractor will be responsible for all fees and taxes associated with obtaining such licenses, approvals, permits and authorizations, and for any fines and penalties arising from its noncompliance with any applicable law.
- 11.5 Confidential Information.** During the Term and at all times thereafter, Contractor will: (a) hold all Confidential Information in strict trust and confidence, (b) refrain from using or permitting others to use Confidential Information in any manner or for any purpose not expressly permitted by this Agreement, and (c) refrain from disclosing or permitting others to disclose any Confidential Information to any third party without obtaining the JBE's express prior written consent on a case-by-case basis. Contractor will disclose Confidential Information only to its employees or contractors who need to know that information in order to perform Services hereunder and who have executed a confidentiality agreement with Contractor at least as protective as the provisions of this section. The provisions of this section shall survive the expiration or termination of this Agreement and any Participating Addendum. Contractor will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Contractor protects its own confidential or proprietary information of a similar nature, and with no less than the greater of reasonable care and industry-standard care. Each JBE owns all right, title and interest in its Confidential Information. Contractor will notify the affected JBE promptly upon learning of any unauthorized disclosure or use of Confidential Information and will cooperate fully with the JBE to protect such

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Confidential Information. Upon a JBE's request and upon any termination or expiration of this Agreement or a Participating Addendum, Contractor will promptly (a) return to the JBE or, if so directed by the JBE, destroy all such JBE's Confidential Information (in every form and medium), and (b) certify to the JBE in writing that Contractor has fully complied with the foregoing obligations. Contractor acknowledges that there can be no adequate remedy at law for any breach of Contractor's obligations under this section, that any such breach will likely result in irreparable harm, and that upon any breach or threatened breach of the confidentiality obligations, the JBEs shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.

- 11.6 Ownership of Deliverables.** Unless otherwise agreed in this Agreement, regarding any Deliverables or any other work product to be provided to a JBE, Contractor hereby assigns to such JBE all rights, title, and interest (and all intellectual property rights, including but not limited to copyrights) in and to such Deliverables and work product, any partially-completed Deliverables, and related materials. Contractor agrees not to assert any rights at common law, or in equity, or establish a copyright claim in any of these materials. Contractor shall not publish or reproduce any Deliverable or other work product in whole or part, in any manner or form, or authorize others to do so, without the written consent of the JBE.
- 11.7 Publicity.** Contractor shall not make any public announcement or press release about this Agreement (or any Participating Addendum) without the prior written approval of the Establishing JBE (and with respect to any Participating Addendum, the prior written approval of the applicable JBE).
- 11.8 Choice of Law and Jurisdiction.** California law, without regard to its choice-of-law provisions, governs this Agreement (including any Participating Addendum). The Contractor and the applicable JBEs shall attempt in good faith to resolve informally and promptly any dispute that arises. Jurisdiction for any legal action arising from this Agreement shall exclusively reside in state or federal courts located in California, and the parties hereby consent to the jurisdiction of such courts.
- 11.9 Negotiated Agreement.** This Agreement has been arrived at through negotiation between the parties. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code section 1654.
- 11.10 Amendment and Waiver.** Except as otherwise specified in this Agreement, no amendment or change to this Agreement will be effective unless expressly agreed in writing by a duly authorized officer of the Establishing JBE. A waiver of enforcement of any of this Agreement's terms or conditions by the Establishing JBE is effective only if expressly agreed in writing by a duly authorized officer of the Establishing JBE. Any waiver or failure by a JBE to enforce any provision of this Agreement or Participating Addendum on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
- 11.11 Follow-On Contracting.** No person, firm, or subsidiary who has been awarded a Consulting Services agreement may submit a bid for, nor be awarded an agreement for, the providing of services, procuring goods or supplies, or any other related action that

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is required, suggested, or otherwise deemed appropriate in the end product of this Agreement.

11.12 Severability. If any part of this Agreement is held unenforceable, all other parts remain enforceable.

11.13 Headings; Interpretation. All headings are for reference purposes only and do not affect the interpretation of this Agreement. The word “including” means “including, without limitation.” Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days.

11.14 Time of the Essence. Time is of the essence in Contractor’s performance under this Agreement.

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

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APPENDIX D

Defined Terms

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

“Agreement” is defined on the Coversheet.

“Contractor” is defined on the Coversheet.

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

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

“Contract Amount” means the contract amount of any Participating Addendum.

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

“Deliverables” is defined in Appendix A.

“Effective Date” is defined on the Coversheet.

“Establishing JBE” is defined on the Coversheet.

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

“Goods” is defined in Appendix A.

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

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

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

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

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

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

“**Participating Addendum**” is defined in Appendix A.

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

“**PCC**” refers to the California Public Contract Code.

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

“**Stop Work Order**” is defined in Appendix B.

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

“**Work**” is defined in Appendix A.

“**Accounting Code**” – a unique billing code used by the JBE to identify and bill specific User-Groups. The Judicial Council uses an 18-digit code to identify and bill specific User Groups.

“**Authorized Signature**” – a JBE designee with appropriate purchase authority, designated by office.

A. Business Day - Monday through Friday 7am – 6pm Pacific Time, excluding Judicial Council holidays:

- New Year’s Day
- Martin Luther King, Jr. Day
- Lincoln’s Birthday
- Washington’s Birthday
- Cesar Chavez Day
- Memorial Day
- Independence Day
- Labor Day
- Columbus Day
- Veterans Day
- Thanksgiving Day
- Day after Thanksgiving
- Christmas Day

Note that an individual JBE may elect to define the term “Business Day” differently in its Participating Addendum.

“**Captioner**” – the Contractor’s designee to provide Captioning Services.

“**Caption Line Timing**” – the timing for which the caption lines appear in synch with the original audio source.

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“Captioning Services” - services provided by Contractor to translate audio content, either live or pre-recorded, into display text synchronized with the audio, equivalent text to that of the audio, and accessible formats as required by the Master Agreement.

“Edited Caption File” – fully edited transcript of the original audio event/project with 99 percent accuracy; inclusive of .smi/.srt and .docx (or equivalent) file types.

“Event” – an Event refers to a real-time, live streaming event or audio broadcast.

“Granicus Software” - Granicus is a cloud-based software for communications, meeting and agenda management, and digital services to more than 3,000 public sector organizations. This software is currently in use by the Judicial Council and some of the Superior Courts. The software provides live broadcasts of meetings, which may require live captioning.

“Project” – a Project refers to a non-live/pre-recorded video.

“Satisfactory Work Product” – for unedited captioning, captions should have an error rate of less than 5 percent; for edited captions, the error rate should be less than 0.1 percent

“Substantial Compliance” – within one percent of the established error rate for captioning files, edited or unedited.

“Unsatisfactory Work Product” – unedited captions that contain an error rate of 5 percent or more and edited captions that contain an error rate of 0.1 percent or more.

“Usage Tracking Reports” – the Contractor must provide usage tracking reports (UTR) on an ad hoc report basis. UTR’s shall be able to track:

- Number of Work Orders,
- Accounting Codes utilized under the agreement,
- Amount expended by an individual JBE under the Master Agreement, itemized by State of California fiscal year or calendar year,
- Number of hours of captioned events,
- Number of hours of captioned events and edited transcripts,
- Number of hours of captioned pre-recorded events/projects,
- Names of the events or media captioned and/or edited, and
- Custom reports populated by key-word search.
- Number of captioning views (Captioning Viewer Data/Analytics).

“User Group” – refers to a unique group within the Judicial Council, Courts of Appeal, California Supreme Court, Habeas Corpus Resource Center, or Trial Court requiring Captioning Services; assigned and identified by Accounting Code.

“Work Order” – order by a JBE for Captioning Services from Contractor under the Master Agreement and applicable Participating Addendum.

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APPENDIX E

Participating Addendum

- (1) This Participating Addendum is made and entered into as of [month/day/year] (“Participating Addendum Effective Date”) by and between the _____ [add full name of the JBE] (“JBE”) and **VITAC Corporation** (“Contractor”) pursuant to the Master Agreement # **MA-SF202102** (“Master Agreement”) dated **July 1, 2021** between the **Judicial Council of California** (“Establishing JBE”) and Contractor. Unless otherwise specifically defined in this Participating Addendum, each capitalized term used in this Participating Addendum shall have the meaning set forth in the Master Agreement.
- (2) This Participating Addendum constitutes and shall be construed as a separate, independent contract between Contractor and the JBE, subject to the following: (i) this Participating Addendum shall be governed by the Master Agreement, and the terms in the Master Agreement are hereby incorporated into this Participating Addendum; (ii) the Participating Addendum (including any Work Orders and purchase order documents pursuant to the Participating Addendum) may not alter or conflict with the terms of the Master Agreement, or exceed the scope of the Work provided for in the Master Agreement; and (iii) the term of the Participating Addendum may not extend beyond the expiration date of the Master Agreement. The Participating Addendum and the Master Agreement shall take precedence over any terms and conditions included on Contractor’s invoice or similar document.
- (3) The Establishing JBE, or under a Participating Addendum a Participating Entity, may at its option place work orders for the Services using **VITAC’s online ordering system (<https://order.vitac.com>) for real-time captions or customized Work Orders Request Form – Appendix F – for offline captioning services** subject to and governed by the terms of the Master Agreement and the Participating Addendum. Any work request that conflicts with or alters any term of the Master Agreement (or the Participating Addendum) or exceeds the scope of the Work provided for in this Agreement, will not be deemed part of the contract between Contractor and JBE. Subject to the foregoing, the Participating Addendum shall be deemed to include such Services.
- (4) The JBE is solely responsible for the acceptance of and payment for the Work under this Participating Addendum. The JBE shall be solely responsible for its obligations and any breach of its obligations. Any breach of obligations by the JBE shall not be deemed a breach by the Establishing JBE or any other Participating Entity. The Establishing JBE shall have no liability or responsibility of any type related to: (i) the JBE’s use of or procurement through the Master Agreement (including this Participating Addendum), or (ii) the JBE’s business relationship with Contractor. The Establishing JBE makes no guarantees, representations, or warranties to any Participating Entity.
- (5) Pricing for the Work shall be in accordance with the prices set forth in the Master Agreement.
- (6) The term of this Participating Addendum shall be from the Effective Date until: [_____ month/day/year – may not exceed the term of the Master Agreement].

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(7) The JBE hereby orders, and Contractor hereby agrees to provide, the following Work :

- **Options for ordering, including description of Services and/or Deliverables and timeline for completion of work.**

(8) Any notices must be sent to the following address and recipient:

If to Contractor:	If to the JBE:
<u>VITAC Corporation</u> Attn: Ann Cannon 8300 E. Maplewood Ave, Suite 310 Greenwood Village, CO 80111 <u>With a copy to:</u> <u>ann.cannon@vitac.com</u>	<u>[name, title, address]</u> <u>With a copy to:</u>

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

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

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

[JBE]

VITAC COPORATION

By: _____

Name:

Title:

By:  _____

Name: Doug Karlovits

Title: CBDO

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APPENDIX F

**OFFLINE CAPTIONING SERVICES
WORK ORDER REQUEST FORM**

This Work Order (WO) Request is made by the Judicial Council of California’s Judicial and Trial Court Leadership Office under Agreement No. MA-SF202102 with VITAC Corporation.

JUDICIAL COUNCIL OF CALIFORNIA:

Requestor/Contact:

Name:

User Group:

Phone:

Accounting Code¹:

VITAC Corporation:

Account Manager:

Name: Ann Cannon, Vice President, Sales

Address: 8300 E. Maplewood Avenue, #300
Greenwood Village, CO 80111

Email: ann.cannon@vitac.com

Phone: (917) 674-6120

Work Order Received Date: Click or tap to enter a date.

Confirmation of Event/Project: Date Time Language(s) File Types Deliverable Date

Fixed Hourly Rate for Services

Requested:

Captioner(s) to Provide Services²: On Unsatisfactory List: Yes No

Notes for JCC:

For VITAC Use Only	
Date:	_____
Submitted by:	_____
Auth. Signature:	_____
Authorized by:	_____

For JCC Use Only	
Date Submitted:	_____
Submitted by:	_____
Auth. Signature:	_____
Authorized by:	_____

¹ Accounting code is the JCC charge code.

² Name and/or Unique Identifier

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**OFFLINE CAPTIONING SERVICES
WORK ORDER REQUEST FORM**

Description of Services³

Request Type: Standard⁴ Urgent⁵

Name of Event:

Service Date(s) and Time(s) ⁶ :	Day 1: Click or tap to enter a date. Time:	Day 2: Click or tap to enter a date. Time:	Day 3: Click or tap to enter a date. Time:
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Participant List, Lexicon Attached: YES NO

Closed Captioning Request Type: Live, Real-Time Event Pre-Recorded Project

Language(s) of Closed Captioning:	<input type="checkbox"/> English <input type="checkbox"/> Tagalog	<input type="checkbox"/> Spanish <input type="checkbox"/> Vietnamese	<input type="checkbox"/> Cantonese <input type="checkbox"/> Mandarin
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Live Real-Time Editing: Unedited Transcript Edited Transcript

Pre-Recorded Project or Post-Event Editing: Pre-Recorded Project Post-Event Unedited Post-Event Edited

Language(s) of Transcript(s):	<input type="checkbox"/> English <input type="checkbox"/> Tagalog	<input type="checkbox"/> Spanish <input type="checkbox"/> Vietnamese	<input type="checkbox"/> Cantonese <input type="checkbox"/> Mandarin
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<input type="checkbox"/> .docx	<input type="checkbox"/> .smi	<input type="checkbox"/> .srt format
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Files Requested:

Notes to VITAC: Chevron styled format
Final agenda pending

³ Refer to Master Agreement Appendix B, Payment Provisions

⁴ More than three business days before event date.

⁵ Three or less business days before event date.

⁶ Time is scheduled event time or length of pre-recorded project.