

**ATTACHMENT 2
GENERAL TERMS AND CONDITIONS/DEFINED TERMS**

I. GENERAL TERMS AND CONDITIONS

1. WORK

1.1 Work. Contractor shall provide the Work described in this Agreement, including the Statement of Work and the Specifications. Except as set forth in the Statement of Work, Contractor is responsible for providing all facilities, materials and resources (including personnel, equipment and software) necessary and appropriate for delivery of the Work and to meet Contractor's obligations under this Agreement. Unless otherwise approved by the Court in writing in advance, Work may not be performed outside of the United States.

1.2 Stop Work Orders.

(a) **Effect.** The Court may, at any time, by written Stop Work Order to Contractor, require Contractor to stop all, or any part, of the Work for a period of up to ninety (90) days after the Stop Work Order is delivered to Contractor, and for any further period to which the Parties may agree. Upon receipt of a Stop Work Order, Contractor shall promptly comply with the terms of the Stop Work Order and take all reasonable steps to end the incurrence of any costs, expenses or liabilities allocable to the Work covered by the Stop Work Order during the period of work stoppage. Within ninety (90) days after a Stop Work Order is delivered to Contractor, or within any extension of that period mutually agreed to by the Parties, the Court shall either: (i) cancel the Stop Work Order; or (ii) terminate the Work covered by the Stop Work Order. The Court shall not be liable to Contractor for loss of profits because of a Stop Work Order issued under this provision.

(b) **Expiration or Cancellation.** If a Stop Work Order is canceled by the Court or the period of the Stop Work Order or any extension thereof expires, Contractor shall promptly resume the Work covered by such Stop Work Order. The Court shall make an equitable adjustment in the delivery schedule, and the applicable Statement of Work shall be modified, in writing, accordingly, if: (i) the Stop Work Order directly and proximately results in an increase in the time required for the performance of any part of the Statement of Work; and (ii) Contractor asserts its right to such equitable adjustment within thirty (30) days after the end of the period of work stoppage.

1.3 Change Orders. From time to time during the term of this Agreement, the Parties may mutually agree in writing to a change to the Work, which may require an extension or reduction in the schedule and/or an increase or decrease in the fees and expenses and/or the Work (each, a "Change"), including: (a) a change to the scope or functionality of the Deliverables; or (b) a change to the scope of the Work. In the event the Parties agree on a Change, the Parties will seek to mutually agree on a change order identifying the impact and setting forth any applicable adjustments in the Statement of Work and/or payments to Contractor. An authorized representative of each Party shall promptly sign the mutually agreed upon change order to acknowledge the impact and to indicate that Party's agreement to the adjustments.

1.4 Third Party or Court Services. Notwithstanding anything in this Agreement to the contrary, the Court shall have the right to perform or contract with a Third Party to provide any services or goods within or outside the scope of the Work, including services to augment or supplement the Work. In the event the Court performs or contracts with a Third Party to perform any such service, Contractor shall cooperate in good faith with the Court and any such Third Party, to the extent reasonably required by the Court. Such cooperation shall include, without limitation, providing such information as a person with reasonable commercial skills and expertise would find reasonably necessary for the Court or a Third Party to perform its services relating to the Work.

1.5 Data and Security. If Contractor is granted access to Court Data, Confidential Information or Court Work Locations in the performance of the Work;

(a) **Data Security.** Contractor shall comply with the Data Safeguards. Contractor personnel and Subcontractors shall not attempt to access, and shall not allow access to the Court Data and other Confidential Information that is not required for providing the Work by such personnel or Subcontractors. In the event Contractor or a Subcontractor discovers or is notified of a breach or potential breach of security relating to the Court Data or

other Confidential Information, Contractor shall promptly, at its own expense: (i) notify the Court Project Manager of such breach or potential breach; and (ii) if the applicable Court Data or other Confidential Information was in the possession of Contractor or Subcontractors at the time of such breach or potential breach, Contractor shall (1) investigate and cure the breach or potential breach and (2) take measures satisfactory to the Court to prevent such breach or potential breach from recurring.

(b) ***Safety and Security Procedures.*** Contractor shall maintain and enforce, at the Contractor Work Locations, industry-standard safety and physical security policies and procedures. While at each Court Work Location, Contractor shall comply with the safety and security policies and procedures in effect at such Court Work Location.

(c) ***Security Assessments.*** At least once a year, or upon the Court's request, Contractor shall, at its expense, perform, or cause to have performed an assessment of Contractor's compliance with the safety and security policies set forth in this Agreement or any Statement of Work. Contractor shall provide to the Court the results, including any findings and recommendations made by Contractor's assessors, of such assessment, and, at its expense, take any and all necessary corrective actions. The Court and Court Contractors may, at the Court's expense, perform the assessments described in this Section and "snap" assessments (e.g., safety and data/physical security assessments) of the Court Work Locations.

1.6 Project Staff. If specified in or unless otherwise provided for in the Statement of Work;

(a) ***Contractor Project Manager.*** The Contractor Project Manager shall serve, from the Effective Date, as the Contractor project manager and primary Contractor representative under this Agreement. The Contractor Project Manager shall (i) have overall responsibility for managing and coordinating the performance of Contractor's obligations under this Agreement, including the performance of all Subcontractors; and (ii) be authorized to act for and bind Contractor and Subcontractors in connection with all aspects of this Agreement. The Contractor Project Manager shall respond promptly and fully to all inquiries from the Court Project Manager.

(b) ***Contractor Key Personnel.*** The Court reserves the right to interview and approve proposed Contractor Key Personnel prior to their assignment to the Court. Contractor shall not replace or reassign any Contractor Key Personnel unless the Court consents in advance in writing or such Contractor Key Personnel (i) voluntarily resigns or takes a leave of absence from Contractor, (ii) has his/her employment, professional or other for-hire relationship terminated by Contractor, (iii) fails to perform his or her duties and responsibilities pursuant to this Agreement, or (iv) dies or is unable to work due to his or her disability. If Contractor needs to replace a Contractor Key Personnel for any of the foregoing reasons, Contractor shall (1) notify the Court promptly, (2) provide resumes for proposed replacement Contractor Key Personnel within two (2) Business Days after so notifying the Court, and (3) be responsible for all costs and expenses associated with any replacement of any Contractor Key Personnel member (including, without limitation, any costs and expenses associated with training, project orientation or knowledge transfer reasonably required for replacement personnel to provide the applicable Work).

(c) ***Subcontractors.*** Contractor shall not subcontract or delegate any of the obligations under this Agreement except as approved by the Court in writing in advance. The Court may withdraw its approval of a Subcontractor if the Court determines in good faith that the Subcontractor is, or will be, unable to effectively perform its responsibilities. If the Court rejects any proposed Subcontractor in writing, Contractor will assume the proposed Subcontractor's responsibilities. No subcontracting shall release Contractor from its responsibility for performance of its obligations under this Agreement. Contractor shall remain fully responsible for the performance of Subcontractors hereunder, including, without limitation, all work and activities of Subcontractors providing services to Contractor in connection with the Work. Contractor shall be the sole point of contact with Subcontractors under this Agreement, and Contractor shall be solely responsible for Subcontractors, including, without limitation, payment of any and all charges resulting from any subcontract. The Court's consent to any subcontracting or delegation of Contractor's obligations will take effect only if there is a written agreement with the Subcontractor, stating that the Contractor and Subcontractor: (i) are jointly and severally liable to the Court for performing the duties in this Agreement; (ii) affirm the rights granted in this Agreement to the Court; (iii) make the representations and warranties made by the Contractor in this Agreement; (iv) appoint the Court an intended Third Party beneficiary under Contractor's written agreement with the Subcontractor; and (v) shall comply with and be subject to the terms of this Agreement, including with respect to Intellectual Property Rights, Confidential Information and Data

Safeguards.

(d) **Project Staff.** Contractor shall appoint to the Project Staff: (i) individuals with suitable training and skills to provide the Work, and (ii) sufficient staffing to adequately provide the Work. Contractor shall make commercially reasonable efforts consistent with sound business practices to honor the specific request of the Court with regard to assignment of its employees. The Court may require Contractor to remove any personnel from the Project Staff that interact with any personnel of the Court or Court Contractors (including, without limitation, the Contractor Project Manager) upon providing to Contractor a reason (permitted by law) for such removal. Contractor may, with the Court's consent, continue to retain such member of the Project Staff in a role that does not interact with any personnel of the Court or Court Contractors. The Contractor Project Manager and the Court Project Manager shall work together to mitigate any impact on the schedule as set forth in a Statement of Work caused by any replacement of a Project Staff member. Contractor shall be responsible for all costs and expenses associated with any Project Staff replacement. Contractor shall assure an orderly and prompt succession for any Project Staff member who is replaced.

(e) **Conduct of Project Staff.** (i) While at the Court Work Locations, Contractor shall, and shall cause Subcontractors to: (1) comply with the requests, standard rules and regulations and policies and procedures of the Court regarding safety and health, security, personal and professional conduct generally applicable to such Court Work Locations, and (2) otherwise conduct themselves in a businesslike manner. (ii) Contractor shall enter into an agreement with each member of the Project Staff, which assigns, transfers, and conveys to Contractor all of such Project Staff member's right, title, and interest in and to any Developed Materials, including all Intellectual Property Rights in and to Developed Materials. (iii) Contractor shall cooperate with the Court if the Court wishes to perform a background check or drug test on any of Contractor's employees or Subcontractors by (1) obtaining, at no additional cost, all releases, waivers, and permissions the Court may require, and (2) reimbursing the Court for the cost of each background check and drug test. (iv) Contractor shall provide prompt notice to the Court and immediately remove from Project Staff or not assign to Work any person who refuses to undergo a background check or drug test or any person whose background check or drug test result is unacceptable to Contractor or the Court.

1.7 Licenses and Approvals. Contractor shall obtain and keep current all necessary licenses, approvals, permits and authorizations required by Applicable Law to provide the Work. 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.

1.8 Progress Reports. As directed by the Court, Contractor must deliver progress reports or meet with Court personnel on a regular basis to allow: (a) the Court to determine whether the Contractor's performance is satisfactory and timely pursuant to the terms of this Agreement and the project is on schedule, (b) communication of interim findings, and (c) opportunities for airing difficulties or special problems encountered so that remedies can be developed quickly.

1.9 Maintenance and Support Services. *If this Agreement is for IT goods or services, this section applies:* Unless otherwise specified in this Agreement;

(a) The Contractor shall promptly provide the Court with all Upgrades, including without limitation: (i) all Upgrades generally made available by Contractor to its other customers; (ii) Upgrades as necessary so that the Work complies with the Specifications and Applicable Law (including changes in Applicable Law); (iii) Upgrades as necessary so that the Work operates under new versions or releases of the Court's operating system or database platform; and (iv) all on-site services necessary for installation of Upgrades. Without limiting any other obligation of Contractor under this Agreement, Contractor represents and warrants that it will maintain services, equipment, software or any other part of the Work so that they operate in accordance with their Specifications and Documentation; and

(b) The Contractor shall respond to the Court within four (4) hours after the Court reports a Technical Support Incident (such hours all occurring during Standard M&S Hours) to Contractor.

2. DELIVERY, ACCEPTANCE, AND PAYMENT

2.1 Delivery. Contractor shall deliver to the Court the Deliverables in accordance with this Agreement, including the Statement of Work. Unless otherwise specified by this Agreement, Contractor will deliver all goods purchased by the Court “Free on Board Destination Freight Prepaid” to the Court at the address and location specified by the Court. Title to all goods purchased by the Court vests in the Court upon payment of the applicable purchase price. Contractor will bear the risk of loss for any Work being delivered until received by the Court at the proper location. All shipments by Contractor or its Subcontractors must include packing sheets identifying: this Agreement number, the Court’s purchase order number, item number, quantity and unit of measure, part number and description of the goods shipped, and appropriate evidence of inspection, if required. Goods for different Agreements shall be listed on separate packing sheets.

2.2 Acceptance. All Work is subject to inspection and written acceptance by the Court. The Court may reject any Work that: (a) fails to meet applicable requirements, Specifications, acceptance criteria, or is substituted for items ordered (b) are not as warranted, (c) are performed or delivered late, or not provided in accordance with this Agreement; (d) shipped in excess or deficient quantities, or (e) contain Defects. Payment does not imply acceptance of Contractor’s invoice or Work. If the Court provides Contractor a notice of rejection for any Work, Contractor shall modify such rejected Work at no expense to the Court to correct the relevant deficiencies and shall redeliver such Work to the Court within ten Business Days after Contractor’s receipt of such notice of rejection, unless otherwise agreed in writing by the Parties. Thereafter, the Parties shall repeat the process set forth in this Section until Contractor’s receipt of the Court’s written acceptance of such corrected Work (each such Court written acceptance, an “Acceptance”); provided, however, that if the Court rejects any Work on at least two occasions, the Court may terminate that portion of this Agreement which relates to the rejected Work at no expense to the Court.

2.3 Fees and Payment. Subject to the terms of this Agreement, the Contractor shall invoice the Court, and the Court shall compensate Contractor, as set forth in Payment Provisions. The fees to be paid to Contractor under this Agreement shall be the total and complete compensation to be paid to Contractor for its performance under this Agreement. Contractor shall bear, and the Court 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.

3. REPRESENTATIONS AND WARRANTIES Contractor represents and warrants to the Court as follows:

3.1 Authorization/Compliance with Laws. (a) Contractor has full power and authority to enter into this Agreement, to grant the rights and licenses herein and to perform its obligations under this Agreement, and that Contractor’s representative who signs this Agreement has the authority to bind Contractor to this Agreement; (b) the execution, delivery and performance of this Agreement have been duly authorized by all requisite corporate action on the part of Contractor; (c) Contractor shall not and shall cause Subcontractors not to enter into any arrangement with any Third Party which could reasonably be expected to abridge any rights of the Court under this Agreement; (d) this Agreement constitutes a valid and binding obligation of Contractor, enforceable in accordance with its terms; (e) Contractor is qualified to do business and in good standing in the State of California; (f) Contractor, its business, and its performance of its obligations under this Agreement comply with all Applicable Laws; and (g) Contractor pays all undisputed debts when they come due.

3.2 Child Support Compliance Act. *If the Contract Amount is \$100,000 or more this section applies:* (a) Contractor recognizes the importance of child and family support obligations and fully complies with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and (b) Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

3.3 Conflict Minerals. *If this Agreement is for goods that contain these minerals and Contractor did not provide to Court a Conflict Minerals certification as part of the solicitation process, this section applies:* Contractor certifies either: (a) it is not a “scrutinized company” as defined in PCC 10490(b), or (b) the goods or services the Contractor will provide to the Court are not related to products or services that are the reason the Contractor must comply with Section 13(p) of the Securities Exchange Act of 1934.

3.4 Darfur Contracting Act. *If this Agreement is for non-IT goods or services and Contractor did*

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not provide to Court a Darfur Contracting Act certification as part of the solicitation process, this section applies: Contractor certifies that either (a) it does not currently, and it has not within the previous three years, business activities or other operations outside of the United States, or (2) it is a “scrutinized company” as defined in PCC 10476, but it has received written permission for the Court to submit a bid or proposal pursuant to PCC 10477(b), or (3) it has, or it has had within the previous three years, business activities or other operations outside of the United States, but it is not a “scrutinized company” as defined in PCC 10476.

3.5 Domestic Partners, Spouses, and Gender Discrimination. *If the Contract Amount is \$100,000 or more this section applies:* Contractor is in compliance with Public Contract Code section 10295.3, which places limitations on contracts with contractors whose benefits provisions discriminate between employees with spouses and employees with domestic partners.

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

3.7 Not an Expatriate Corporation. Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code section 10286.1, and is eligible to contract with the Court.

3.8 Four-Digit Date Compliance. Contractor will provide only Four-Digit Date Compliant Work to the Court. “Four-Digit Date Compliant” Work can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries.

3.9 Good Standing. *If Contractor is a corporation, limited liability company, or limited partnership, and this Agreement is performed in whole or in part in California, this section applies:* Contractor is, and will remain for the Term, qualified to do business and in good standing in California.

3.10 No Gratuities or Conflict Of Interest. Contractor: (a) has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Court Personnel with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement; and (b) has no interest that would constitute a conflict of interest under Public Contract Code 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 the Court.

3.11 No Harassment/Non-Discrimination. Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of this Agreement, and Contractor takes all reasonable steps to prevent harassment from occurring. 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 has notified in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor’s obligations of non-discrimination. The Contractor shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

3.12 Intellectual Property. Contractor shall perform its obligations under this Agreement in a manner that the Work (including each Deliverable) and any portion thereof, does not infringe, or constitute an infringement, misappropriation or violation of, any Intellectual Property Right. Contractor has full Intellectual Property Rights and authority to perform all of its obligations under this Agreement, and Contractor is and will be either the owner of, or authorized to use for its own and the Court’s benefit, all Contractor Materials, Third Party Materials, and Licensed Software used and to be used in connection with the Work.

3.13 No Interference. To the best of Contractor’s knowledge, this Agreement does not create a

material conflict of interest or breach under any of Contractor's other contracts.

3.14 Iran Contracting Act. *If the Contract Amount is \$1,000,000 or more and Contractor did not provide to Court an Iran Contracting Act certification as part of the solicitation process, this section applies:* Contractor certifies either (a) 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 (b) it has received written permission from the Court to enter into this Agreement pursuant to PCC 2203(c).

3.15 No Litigation. No Claim or governmental investigation is pending or threatened against or affecting Contractor or Contractor's business, financial condition, or ability to perform this Agreement.

3.16 Malicious Code. No Work will contain any Malicious Code. Contractor shall immediately provide to the Court written notice in reasonable detail upon becoming aware of the existence of any Malicious Code. Without limiting the foregoing, Contractor shall use best efforts and all necessary precautions to prevent the introduction and proliferation of any Malicious Code in the Court's IT Infrastructure or networks or in the Contractor systems used to provide Work. In the event Contractor or the Court discovers the existence of any Malicious Code, Contractor shall use its best efforts, in cooperation with the Court, to effect the prompt removal of the Malicious Code from the Work and the Court's IT Infrastructure and the repair of any files or data corrupted thereby, and the expenses associated with the removal of the Malicious Code and restoration of the data shall be borne by Contractor. In no event will Contractor or any Subcontractor invoke any Malicious Code.

3.17 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.

3.18 Sales and Use Tax. Contractor collects and remits sales and use taxes as and to the extent required under the Revenue and Taxation Code.

3.19 Sweatshop Labor. *If this Agreement provides for the laundering of apparel, garments or corresponding accessories, or for furnishing equipment, materials, or supplies other than for public works, this section applies:* Contractor certifies that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the Court under this Agreement have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and PCC 6108. Contractor agrees to cooperate fully in providing reasonable access to Contractor's records, documents, agents, and employees, and premises if reasonably required by authorized officials of the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under this section and shall provide the same rights of access to the Court.

3.20 Tax Delinquency. *If this Agreement is for non-IT goods or services, this section applies:* Contractor must provide notice to the Court immediately if Contractor has reason to believe it may be placed on either (a) the California Franchise Tax Board's list of 500 largest state income tax delinquencies, or (b) the California Board of Equalization's list of 500 largest delinquent sales and use tax accounts. The Court may terminate this Agreement immediately "for cause" pursuant to Section 8.3 below if (i) Contractor fails to provide the notice required above, or (ii) Contractor is included on either list mentioned above.

3.21 Work. (a) the Work 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 Work; (b) Contractor will use efficiently the resources or services necessary to provide the Work; and provide the Work in the most cost efficient manner consistent with the required level of

quality and performance; (c) the Work will be merchantable for its intended purpose, and provided free and clear of all liens, claims, and encumbrances; (d) all Work will be free from all defects in materials and workmanship, and will be in accordance with Specifications, Documentation, Applicable Laws, and other requirements of this Agreement; and (e) all goods purchased by the Court from Contractor will be new. The foregoing representation and warranty in Section 3.21(d) shall commence upon the Court's Acceptance of the applicable Work, and shall continue for a period of one year following such Acceptance unless otherwise provided for in Agreement. In the event any Work does not conform to the foregoing provisions of this Section 3.21, Contractor shall promptly correct all non-conformities.

3.22 Work Eligibility. All personnel assigned to perform this agreement are able to work legally in the United States and possess valid proof of work eligibility.

3.23 Miscellaneous. The rights and remedies of the Court provided in this Section 3 will not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. The representations and warranties that Contractor makes in this Section 3 shall be true and accurate as of the Effective Date, and shall remain true during the term of this Agreement and the Termination Assistance Period. Contractor shall promptly notify the Court if any representation or warranty becomes untrue.

4. INTELLECTUAL PROPERTY *If this Agreement is for IT goods and/or services, this section applies:*

4.1 Contractor/Third Party Materials. Contractor shall set forth in an exhibit to each Statement of Work all Contractor Materials and Third Party Materials that Contractor intends to use in connection with that Statement of Work. The Court shall have the right to approve in writing the introduction of any Contractor Materials or Third Party Materials into any Work prior to such introduction. Contractor grants to the Court, together with all Court Contractors, without additional charge, a perpetual, irrevocable, royalty-free, fully paid-up, worldwide, non-exclusive license to use, reproduce, perform, display, transmit, distribute, modify, create derivative works of, make, have made, sell, offer for sale and import Contractor Materials and Third Party Materials (including Source Code) and to sublicense such rights to other entities, in each case for Court business and operations.

4.2 Rights in Developed Materials. Notwithstanding any provision to the contrary, upon their creation the Developed Materials (and all Intellectual Property Rights therein) will be the sole and exclusive property of the Court. Contractor (for itself, Project Staff and Subcontractors) hereby irrevocably assigns, transfers and conveys to the Court without further consideration all worldwide right, title and interest in and to the Developed Materials, including all Intellectual Property Rights therein. Contractor further agrees to execute, and shall cause Project Staff and Subcontractors to execute, any documents or take any other actions as may be reasonably necessary or convenient to perfect the Court's or its designee's ownership of any Developed Materials and to obtain and enforce Intellectual Property Rights in or relating to Developed Materials. Contractor shall promptly notify the Court upon the completion of the development, creation or reduction to practice of any and all Developed Materials.

4.3 Retention of Rights. The Court retains all rights, title and interest (including all Intellectual Property Rights) in and to the Court Materials. Subject to rights granted herein, Contractor retains all rights, title and interest (including all Intellectual Property Rights) in and to the Contractor Materials.

4.4 Third Party Rights. Contractor hereby assigns to Court all of Contractor's licenses and other rights (including any representations, warranties, or indemnities that inure to Contractor from third parties) to all Third Party Materials incorporated into the Work. If such licenses and rights cannot be validly assigned to or passed through to Court by Contractor without a Third Party's consent, then Contractor will use its best efforts to obtain such consent (at Contractor's expense) and will indemnify and hold harmless the Court and Court Personnel against all Claims arising from Contractor's failure to obtain such consent.

5. CONFIDENTIALITY

5.1 General Obligations. 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 Court's express prior written consent on a case-by-case basis. Contractor will disclose Confidential

Information only to Project Staff (including Subcontractors) with a need to know in order to provide the Work hereunder and who have executed a confidentiality agreement with Contractor at least as protective as the provisions of this Section 5. The provisions of this Section 5 shall survive beyond the expiration or termination of this Agreement. 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 reasonable care and industry-standard care. The Court owns all right, title and interest in the Confidential Information. Contractor will notify the Court promptly upon learning of any unauthorized disclosure or use of Confidential Information and will cooperate fully with the Court to protect such Confidential Information.

5.2 Removal/Return. Contractor will not remove any Confidential Information from Court facilities or premises without the Court's express prior written consent. Upon the Court's request and upon any termination or expiration of this Agreement, Contractor will promptly (a) return to the Court or, if so directed by the Court, destroy all Confidential Information (in every form and medium), and (b) certify to the Court in writing that Contractor has fully complied with the foregoing obligations.

5.3 Breach of Confidentiality. Contractor acknowledges that there can be no adequate remedy at law for any breach of Contractor's obligations hereunder, that any such breach will likely result in irreparable harm, and therefore, that upon any breach or threatened breach of the confidentiality obligations, the Court shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.

6. INDEMNIFICATION

6.1 General Indemnity. Contractor shall indemnify, defend (with counsel satisfactory to the Court), and hold harmless Court and Court Personnel against all Claims founded upon: (a) a latent or patent defect in any goods, (b) an act or omission of Contractor, its agents, employees, independent contractors, or Subcontractors in the performance of this Agreement, (c) a breach of a representation, warranty, or other provision of this Agreement, and/or (d) an infringement or misappropriation of any trade secret, patent, copyright or Third Party Intellectual Property Rights (collectively, the "Covered Items"). This indemnity applies regardless of the theory of liability on which a claim is made or a loss occurs. This indemnity will survive the expiration or termination of this Agreement, and acceptance of any 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 which would bind an indemnified party, without the Court's prior written consent, which consent shall not be unreasonably withheld; and the Court 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.

6.2 Certain Remedies. If any Covered Item provided under this Agreement becomes, or in Contractor's or the Court's reasonable opinion is likely to become, the subject of any Claim arising from or alleging infringement, misappropriation or other violation of, or in the event of any adjudication that such Covered Item infringes, misappropriates or otherwise violates any Intellectual Property Right of a Third Party, Contractor at its own expense shall take the following actions in the listed order of preference: (a) secure for the Court the right to continue using the applicable Covered Item; or (b) if commercially reasonable efforts are unavailing, replace or modify the infringing Covered Item to make it noninfringing; provided, however, that such modification or replacement shall not degrade the operation or performance of the Covered Item.

7. INSURANCE

7.1 General Requirements. General Requirements for Contractor's insurance that is required during the term of this Agreement:

(a) Contractor will maintain the required insurance for its operations with an insurance company or companies that are rated "A- VII" or higher by A.M. Best's key rating guide and authorized to do business in the State of California. If Contractor is a public agency, the insurance may be provided through a joint power authority formed for the purpose of jointly self-insuring the cost of claims and insurance costs; and

(b) For all insurance policies required by this Section 7.0, Contractor will declare any deductible or

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self-insured retention (SIR). Any deductible or SIR shall be clearly stated on the appropriate certificate of insurance, personal and advertising injury, and liability assumed in a contract; and

(c) If self-insured, Contractor agrees to administer its self-insurance program in a commercially reasonable manner to ensure the availability of funds to cover losses required to be insured against by the Contractor under the terms of this Section 7.0; and

(d) Contractor, prior to commencement of the Services, will provide the Court with certificates of insurance and signed insurance policy endorsements, on forms acceptable to the Court, as evidence that the required insurance is in effect. Where applicable, each certificate of insurance and signed insurance policy endorsement shall specifically provide verification that the State of California, the Judicial Council of California, and the Superior Court of California, County of San Bernardino, and their respective elected and appointed officials, judges, officers, and employees have been added as additional insureds on the insurance policy being referenced; and

(e) The Certificates of Insurance shall be addressed as follows:

Superior Court of California, County of San Bernardino
Attn: Court Executive Office
247 West Third Street, 11th Floor
San Bernardino, CA 92415-0302

(f) All insurance policies required under this Section shall be in force until the end of the term of this Agreement or completion of the Work, whichever comes later; and

(g) If the insurance expires during the term of this Agreement, the Contractor shall immediately renew or replace the required insurance and provide a new current certificate of insurance and signed insurance policy endorsements, or Contractor may be declared in breach of this Agreement. The Court reserves the right to withhold all progress and retention payments until the breach is cured to the satisfaction of the Court. Contractor must provide renewal insurance certificates and signed policy endorsements to the Court no more than ten (10) days following the expiration of the previous insurance certificates and signed policy endorsements; and

(h) In the event the Contractor fails to keep in effect the specified insurance coverage, the Court may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event, subject to the provisions of this Agreement; and

(i) The Commercial General Liability and Automobile Liability insurance required by the "Insurance Requirements" herein below, as well as any Excess/Umbrella Liability insurance that Contractor maintains in compliance with the terms of this Section 7.0 shall be endorsed to include the State of California, the Judicial Council of California, and the Superior Court of California, County of San Bernardino, and their respective elected and appointed officials, judges, officers, and employees as additional insureds, but only with respect to liability assumed by Contractor under the terms of this Agreement or liability arising out of the performance of the Work; and

(j) Contractor, and any insurer (by policy endorsement) providing insurance required under the terms of this Section 7.0, shall waive any right of recovery or subrogation it may have against the State of California, the Judicial Council of California, and the Superior Court of California, County of San Bernardino, and their respective elected and appointed officials, judges, officers, and employees for direct physical loss or damage to the work, or for any liability arising out of the Services performed by Contractor under this Agreement; and

(k) All insurance policies required under this Section 7.0 shall contain a provision that coverage will not be materially changed or cancelled without thirty (30) days' prior written notice to the Court. Notice to the Court of cancellation or material change is the responsibility of the Contractor; and

(l) Contractor shall be responsible for and may not recover from the State of California, the Judicial Council of California, or the Superior Court of California, County of San Bernardino any deductible or self-insured retention that is connected to the insurance required under this Section 7.0; and

(m) The insurance required under this Section 7.0 shall be endorsed to be primary and non-contributing with any insurance or self-insurance maintained by the State of California, the Judicial Council of California, or the Superior Court of California, County of San Bernardino; and

(n) The cost of all insurance required by this Section 7.0 is the sole responsibility of Contractor, and is a component part of Contractor's agreed compensation; and

(o) Contractor will require insurance from Subcontractors and their Sub-subcontractors with substantially the same terms and conditions as required of the Contractor under "Insurance Requirements" herein below and with limits of liability, which in the opinion of Contractor are sufficient to protect the interests of the Contractor, the State of California, the Judicial Council of California, and the Superior Court of California, County of San Bernardino.

7.2 Insurance Requirements. From the beginning of the performance of the Work, Contractor will maintain, at a minimum and in full force and effect, the following insurance:

(a) **Commercial General Liability.** Commercial General Liability insurance (and if required Excess/Umbrella Liability insurance) for all of its operations written on an occurrence form with limits of not less than \$1 million per occurrence and a \$1 million annual aggregate limit of liability. The policy shall include 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 shall not include exclusion for loss resulting from explosion, collapse, or underground perils. This insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought subject to the insurance policy limit of liability; and

(b) **Commercial Automobile Liability.** If one or more automobiles is used in the performance of the Work, Commercial Automobile Liability insurance covering liability arising out of the operation, use, loading, or unloading of a motor vehicle, including owned, hired, and non-owned motor vehicles, assigned to or used in connection with the Work, with limits of not less than \$1 million combined single limit per accident; and

(c) **Workers' Compensation and Employers Liability.** Statutory Workers' Compensation insurance for all of the employees who are engaged in the Services, including special coverage extensions where applicable and Employers Liability insurance with limits not less than \$500,000 for each accident, \$500,000 as the aggregate disease policy limit, and \$500,000 as the disease limit for each employee; and

(d) **Professional Liability Insurance.** *If this Agreement includes professional services this section applies:* Professional Liability insurance covering Contractor's acts, errors, and omissions committed or alleged to have been committed, which arise out of rendering or failure to render the Work required under this Agreement. The policy shall provide limits of not less than \$1 million per claim or per occurrence and \$1 million annual aggregate. If the policy is written on a "claims made" form, Contractor shall continue the coverage, either through policy renewals or the purchase of an extended discovery period, if such extended discovery period is available, for not less than one (1) year from the date of the completion of the Work. The retroactive date or "prior acts date" of any such "claims made" policy must be no later than the date that Work commenced under this Agreement; and

(e) **Commercial Crime Insurance.** *If this Agreement includes Work where Contractor may have access to the Court's financial assets this section applies:* Commercial Crime insurance endorsed to cover loss of money, securities, or other property, with intrinsic value, belonging to the Court, if the loss is the result of the dishonest acts of the Contractor or its employees, whether acting alone or in collusion with others. The policy shall provide limits of not less than \$100,000 per occurrence.

8. TERM/TERMINATION

8.1 Term. This Agreement shall commence on the Effective Date and continue until expiration or terminated in accordance with the terms of this Agreement.

8.2 Termination for Convenience. The Court may terminate, in whole or in part, this Agreement and/or any Statement of Work for convenience (without cause) upon thirty (30) days prior written notice. The

Court's notice obligations under the foregoing sentence shall not apply to any Stop Work Orders issued by the Court under this Agreement or any Statement of Work. After receipt of such notice, and except as otherwise directed by the Court, Contractor shall immediately: (a) stop Work as specified in the notice; and (b) place no further subcontracts, except as necessary to complete the continued portion of this Agreement.

8.3 Early Termination. The Court may terminate, in whole or in part, this Agreement or any Statement of Work immediately "for cause" if Contractor is in Default. The Court may also terminate this Agreement or limit Work (and proportionately, Contractor's fees) upon written notice to Contractor without prejudice to any right or remedy of the Court if: (a) expected or actual funding to compensate the Contractor is withdrawn, reduced or limited; or (b) the Court determines that Contractor's performance under this Agreement has become infeasible due to changes in Applicable Laws.

8.4 Rights and Remedies of the Court.

(a) All remedies provided for in this Agreement may be exercised individually or in combination with any other available remedy. Contractor shall notify the Court 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. If Contractor is in Default, the Court may do any of the following: (i) 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 or any other agreement between the Court and Contractor; (ii) require Contractor to enter into non-binding mediation; (iii) exercise, following notice, the Court's right of early termination of this Agreement as provided herein; and (iv) seek any other remedy available at law or in equity.

(b) If the Court terminates this Agreement or any Statement of Work in whole or in part for cause, the Court may acquire from third parties, under the terms and in the manner the Court considers appropriate, goods or services equivalent to those terminated, and Contractor shall be liable to the Court for any excess costs for those goods or services. Notwithstanding any other provision of this Agreement, in no event shall the excess cost to the Court for such goods and services be excluded under this Agreement as indirect, incidental, special, exemplary, punitive or consequential damages of the Court. Contractor shall continue the Work not terminated hereunder.

(c) In the event of any expiration or termination of this Agreement or the applicable Statement of Work, Contractor shall promptly provide the Court with all originals and copies of the Deliverables (including: (i) any partially-completed Deliverables and related work product or materials; and (ii) any Contractor Materials, Third Party Materials, and Developed Materials comprising such Deliverables or partially-completed Deliverables), Confidential Information, Court Data, Court Materials, and all portions thereof, in its possession, custody, or control. In the event of any termination of this Agreement or a Statement of Work, the Court shall not be liable to Contractor for compensation or damages incurred as a result of such termination; provided that if the Court's termination is not based on a Default, Court shall pay any fees due under this Agreement for Deliverables completed and accepted as of the date of the Court's termination notice.

8.5 Termination Assistance. At the Court's request and option, during the Termination Assistance Period, Contractor shall provide, at the same rates charged immediately before the start of the Termination Assistance Period, to the Court or to its designee (collectively, "Successor") services reasonably necessary to enable the Court to obtain from another contractor, or to provide for itself, services to substitute for or replace the Work, together with all other services to allow the Work to continue without interruption or adverse effect and to facilitate the orderly transfer of the Work to the Successor (collectively, the "Termination Assistance Services"). Termination Assistance Services will be provided to the Court by Contractor regardless of the reason for termination or expiration. At the Court's option and election, the Court may extend the Termination Assistance Period for an additional six (6) months.

8.6 Survival. Termination of this Agreement shall not affect the rights and/or obligations of the Parties which arose prior to any such termination (unless otherwise provided herein) and such rights and/or obligations shall survive any such expiration or termination. Rights and obligations which by their nature should survive shall remain in effect after termination or expiration of this Agreement, including Sections 3 through 10 of these General Terms and Conditions.

9. SPECIAL PROVISIONS

9.1 DVBE Participation Certification. *If Contractor made a commitment to achieve disabled veterans business enterprise (DVBE) participation, this section applies:* Contractor shall within 60 days of receiving final payment under this Agreement (or within such other time period as may be specified elsewhere in this Agreement) certify in a report to the Court: (1) the total amount the prime Contractor received under this Agreement; (2) the name and address of any disabled veterans business enterprises that participated in the performance of this Agreement; (3) the amount each DVBE received from the Contractor; (4) that all payments under this Agreement have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

9.2 Competitively Bid Contracts; Antitrust Claims. *If this Agreement resulted from a competitive bid, this section applies:* Contractor shall comply with the requirements of the Government Code sections set out below:

(a) Contractor shall assign to the Court 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 Court pursuant to the bid. Such assignment shall be made and become effective at the time the Court tenders final payment to the Contractor. (GC 4552).

(b) If the Court receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the Court any portion of the recovery, including treble damages, attributable to overcharges that were paid by the Contractor but were not paid by the Court as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. (GC 4553).

(c) Upon demand in writing by the Contractor, the Court shall, within one year from such demand, reassign the cause of action assigned under this part if the Contractor has been or may have been injured by the violation of law for which the cause of action arose and (1) the Court has not been injured thereby, or (2) the Court declines to file a court action for the cause of action. (GC 4554).

9.3 Electronic Waste Recycling Act. *If this agreement provides for the purchase or lease of electronics covered under the Electronic Waste Recycling Act of 2003, Public Resources Code Sections 42460 et seq., this section applies:* Contractor complies with the requirements of that Act, and Contractor maintains documentation and provides reasonable access to its records and documents that evidence compliance.

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

(a) It is mutually understood between the Parties that this Agreement may have been written for the mutual benefit of both Parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if this Agreement were executed after that determination was made.

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

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

(d) The Parties may amend this Agreement to reflect any reduction in funds.

9.5 Janitorial Services or Building Maintenance Services. *If this Agreement is for janitorial or building maintenance services, this section applies:* If this Agreement requires Contractor to perform services at a

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

9.6 Legal Services. *If this Agreement includes Legal Services, this section applies:*

(a) Contractor shall: (i) adhere to legal cost and billing guidelines designated by the Court; (ii) adhere to litigation plans designated by the Court, if applicable; (iii) adhere to case phasing of activities designated by the Court, if applicable; (iv) submit and adhere to legal budgets as designated by the Court; (v) maintain legal malpractice insurance in an amount not less than \$1 million per occurrence and annual aggregate; and (vi) submit to legal bill audits and law firm audits if so requested by the Court, whether conducted by employees or designees of the Court or by any legal cost-control provider retained by the Court for that purpose. Contractor may be required to submit to a legal cost and utilization review as determined by the Court.

(b) If (i) the Contract Amount is greater than \$50,000, (ii) the legal services are not the legal representation of low- or middle-income persons, in either civil, criminal, or administrative matters, and (iii) the legal services are to be performed within California, then Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services, or an equivalent amount of financial contributions to qualified legal services projects and support centers, as defined in Section 6213 of the Business and Professions Code, during each year of this Agreement equal to the lesser of either (A) thirty (30) multiplied by the number of full time attorneys in the Contractor's offices in California, with the number of hours prorated on an actual day basis for any contract period of less than a full year or (B) the number of hours equal to ten percent (10%) of the Contract Amount divided by the average billing rate of the Contractor. Failure to make a good faith effort may be cause for non-renewal of this Agreement or another judicial branch or other state contract for legal services, and may be taken into account when determining the award of future contracts with the Court for legal services.

9.7 Loss Leader Prohibition. *If this Agreement involves the purchase of goods, this section applies:* Contractor shall not sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code.

9.8 Priority Hiring. *If the Contract Amount is over \$200,000 and this Agreement is for services (other than Consulting Services), this section applies:* 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.

9.9 Recycling. *If this Agreement provides for the purchase or use of goods specified in PCC 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), this section is applicable with respect to those goods. Without limiting the foregoing, if this Agreement includes (i) document printing, (ii) parts cleaning, or (iii) janitorial and building maintenance services, this section is applies:* Contractor shall use recycled products in the performance of this Agreement to the maximum extent doing so is economically feasible. Upon request, Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the PCC 12200, in such goods regardless of whether the goods meet the requirements of PCC 12209. With respect to printer or duplication cartridges that comply with the requirements of PCC 12156(e), the certification required by this subdivision shall specify that the cartridges so comply.

9.10 Equipment Purchases. *If this Agreement includes the purchase of equipment, this section applies:* The Court may, at its option, repair any damaged or replace any lost or stolen items and deduct the cost thereof from Contractor's invoice to the Court, or require Contractor to repair or replace any damaged, lost, or stolen equipment to the satisfaction of the Court at no expense to the Court. If a theft occurs, Contractor must file a police report immediately.

9.11 Equipment Rentals. *If this Agreement includes the rental of equipment, this section applies:* If this Agreement requires the Court to return the equipment, the Court's obligation is to return said equipment in good condition, subject to reasonable wear and tear. Court does not have responsibility for loss or damage arising from causes beyond its control. Court's responsibility for repairs and liability for damage or loss is limited to that made

necessary by or resulting from the negligent act or omission of the Court or Court Personnel. Contractor shall maintain equipment in good working order and make all necessary repairs and adjustments promptly and without limitation. Court may terminate this Agreement or cease paying rent should the Contractor fail to properly maintain the equipment.

9.12 Discharge Violations. *If Contractor is a private entity, this section applies:* Contractor warrants that it is not in violation of any order of resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; or subject to any cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violations of water discharge requirements or discharge prohibitions. Contractor has not been finally determined to be in violation of provisions of federal law relating to air or water pollution.

9.13 Union Activities Restrictions. *If the Contract Amount is \$50,000 or more, this section applies:* As required under Government Code sections 16645-16649, Contractor agrees that no Court funds received under this agreement will be used to assist, promote or deter union organizing. If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no Court funds were used for those expenditures and no reimbursement from the Court was sought for these costs. Contractor will provide those records to the Attorney General upon request.

9.14 Small Business Preference. *This section is applicable if this Agreement is for IT goods or services and Contractor received a small business preference in connection with this Agreement.* Contractor's failure to meet the small business commitment set forth in its bid or proposal constitutes a breach of this Agreement. If Contractor uses small/micro business Subcontractor(s) in connection with this Agreement: (i) Contractor must use the small/micro business Subcontractors identified in its bid or proposal, unless the Court approves in writing replacement by another DGS-certified small/micro business Subcontractor in accordance with the terms of this Agreement; and (ii) Contractor must deliver to the Court with its final invoice a report detailing the actual percentage of small/micro business participation that was achieved under this Agreement; the Court will not pay Contractor's final invoice until this report is received. If Contractor is a nonprofit veteran service agency ("NVSA"), Contractor must employ veterans receiving services from the NVSA for not less than 75 percent of the person-hours of direct labor required for the production of goods and the provision of services performed pursuant to this Agreement.

9.15 Temporary or Leased Staffing Agreements. *This section is applicable if Contractor is providing its employee(s) or Subcontractor(s) to perform services for the Court on a temporary basis under this Agreement:* Contractor warrants that (i) it offers qualifying healthcare coverage to its employees and Subcontractors in compliance with the Affordable Care Act (ACA); and (ii) the compensation received under this Agreement expressly includes any surcharges, taxes and/or fees associated with or required by the ACA even if such surcharges, taxes, and/or fees are not separately stated on its invoice(s).

10. GENERAL

10.1 Accounting. The Contractor shall maintain an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles or GAAP.

10.2 Assignment. This Agreement will not be assignable by Contractor in whole or in part (whether by operation of law or otherwise) without the prior written consent of the Court. Any assignment 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.

10.3 Audits. Contractor shall allow the Court and its designees to review and audit Contractor's documents and records relating to this Agreement, and Contractor shall retain such documents and records for a period of four years following final payment under this Agreement. Contractor shall correct errors and deficiencies by the 20th day of the month following the review or audit. Contractor shall provide to the Court and Court Contractors, on Contractor's premises (or, if the audit is being performed of an Subcontractor, Subcontractor's premises if necessary), space, office furnishings (including lockable cabinets), telephone and facsimile services, utilities and office related equipment and duplicating services as the Court or such Court Contractors may reasonably require to perform the audits described in this Section. Without limiting the foregoing, this Agreement is

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subject to examinations and audit by the State Auditor for a period three years after final payment, *if Contract Amount is \$10,000 or more.*

10.4 Covenant of Further Assurances. Contractor covenants and agrees that, subsequent to the execution and delivery of this Agreement and without any additional consideration, Contractor shall execute and deliver any further legal instruments and perform any acts that are or may become necessary to effectuate the purposes of this Agreement.

10.5 Follow-On Contracting. Subject to certain exceptions, no person, firm, or subsidiary thereof who has been awarded a Consulting Services contract may submit a bid for, nor be awarded a contract for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the Consulting Services contract.

10.6 Force Majeure. Neither party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by a force majeure. Force majeure, for purposes of this paragraph, is defined as follows: acts of war and acts of god, such as earthquakes, floods, and other natural disasters, such that performance is impossible.

10.7 Governing Law, Jurisdiction, and Venue. This Agreement and performance under it will be exclusively governed by the laws of the State of California without regard to its conflict of law provisions. The parties shall attempt in good faith to resolve informally and promptly any dispute that arises under this Agreement. Contractor hereby submits to the exclusive jurisdiction and venue of the state and federal district courts located in California in any legal action concerning or relating to this Agreement.

10.8 Independent Contractors. Contractor and Subcontractors in the performance of this Agreement shall act in an independent capacity and not as officers or employees or agents of the Court or Court Contractors. Neither the making of this Agreement nor the performance of its provisions shall be construed to constitute either of the Parties hereto as an agent, employee, partner, joint venturer, or legal representative of the other, and the relationship of the Parties under this Agreement is that of independent contractors. Neither Party shall have any right, power or authority, express or implied, to bind the other.

10.9 Limitation of Liability. In no event shall the Court be liable to Contractor, its officers, employees, Subcontractors, or Third Parties for any actual, incidental, indirect, special, or consequential damages arising from or relating to this Agreement, including lost profits or revenue. The Court's liability for direct damages arising from or related to this Agreement, for any cause whatsoever, and regardless of the form of action, whether in contract, tort, strict liability or any other legal theory, shall not exceed the amounts paid to Contractor by the Court under this Agreement. Neither the Court nor Court Personnel will be personally responsible for liabilities arising under this Agreement, regardless whether the Court was advised of the possibility of such loss or damage.

10.10 Notices. Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be: (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 Cover sheet. Either Party may change its address for notification purposes by giving the other Party written 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) Business Days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service.

10.11 Order of Precedence. Any conflict among or between the documents making up this Agreement will be resolved in accordance with the following order of precedence (in descending order of precedence): (a) General Terms and Conditions/Defined Terms; (b) Cover sheet; (c) Statement of Work; (d) Payment Provisions; and (e) any exhibits to this Agreement. All Court-issued competitive solicitation and related documents (e.g., the Court's RFP, IFP, Addendum, Questions and Answers), and cost or technical specifications contained in Contractor's bid or proposal submitted in response to the Court's competitive solicitation, may be relied upon for the purpose of clarifying, illustrating, or explaining the intention and understanding of the parties as to the performance of this Agreement.

10.12 Publicity. News releases and other public disclosures pertaining to this Agreement will not be

made by Contractor without prior written approval of the Court.

10.13 References. The Article and Section headings in this Agreement are for reference and convenience only and shall not be considered in the interpretation of this Agreement; (c) references to and mentions of the word “including” or the phrase “e.g.” means “including, without limitation” and (d) unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days.

10.14 Taxes. Unless otherwise required by law, the Court 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 Court 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 Court pursuant to this Agreement.

10.15 Third Party Beneficiaries. Except for the Court, each Party intends that this Agreement shall not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the Parties.

10.16 Miscellaneous. 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. This Agreement constitutes the entire agreement of the Parties, is intended to be a complete integration, and there are no prior or contemporaneous different or additional agreements with respect to the subject matter hereof. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

(a) No amendment to this Agreement will be effective unless in writing and signed by the Parties. Any following documents containing conflicting terms and conditions issued by the Contractor in the performance of the Work shall not modify or contradict this Agreement.

(b) If any part of this Agreement is held unenforceable, all other parts remain enforceable.

(c) A Party’s waiver of enforcement of any of this Agreement’s terms or conditions is effective only if in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

(d) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but taken together, all of which shall constitute one and the same Agreement. This Agreement is of no force and effect until signed by both parties and all Court-required approvals are secured.

(e) Any commencement of Work prior to Agreement approval shall be at Contractor's own risk.

(f) Time is of the essence regarding Contractor’s performance of the Work.

II. DEFINED TERMS¹

“**Acceptance**” is defined in Section 2.2.

“**Agreement**” means this Agreement as defined on the Cover sheet, including any documents incorporated herein by express reference.

“**Applicable Law**” means any applicable laws, codes, legislative acts, regulations, ordinances, rules, rules of court, and orders.

“**Business Day**” means any day other than Saturday, Sunday, or a scheduled Court holiday.

“**Claims**” means claims, suits, actions, arbitrations, demands, proceedings, fines, penalties, losses, damages, liabilities, judgments, settlements, costs, and expenses (including reasonable attorneys’ fees and costs), including those based on the injury to or death of any person or damage to property.

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“**Confidential Information**” means: (i) any information related to the business or operations of the Court, including information relating to Court’s personnel and users; (ii) all financial, statistical, personal, technical and other data and information of the Court (and proprietary information of third parties provided to Contractor) that is designated confidential or proprietary, or that Contractor otherwise knows, or would reasonably be expected to know is confidential; and (iii) all Deliverables, Developed Materials, Court Materials and Court Data. Confidential Information does not include information (that Contractor demonstrates to the Court’s satisfaction, by written evidence): (a) that Contractor lawfully knew prior to the Court’s first disclosure to Contractor, (b) that a Third Party rightfully disclosed to Contractor free of any confidentiality duties or obligations, or (c) that 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 Public Contract Code section 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. The end product may include anything from answers to specific questions to design of a system or plan, and includes workshops, seminars, retreats, and conferences for which paid expertise is retained by contract.

“**Contract Amount**” means total dollar amount of this Agreement, inclusive of any exercised options.

“**Contractor Key Personnel**” means the Contractor Project Manager and those Project Staff members identified as “Key Personnel” as set forth in a Statement of Work.

“**Contractor Materials**” means Materials owned or developed prior to the provision of the Work, or developed by Contractor independently from the provision of the Work and without use of the Court Materials or Confidential Information.

“**Contractor Work Location**” means any location (except for a Court Work Location) from which Contractor provides Work.

“**Court**” means the Superior Court of California, County of San Bernardino.

“**Court Contractors**” means the agents, subcontractors and other representatives of the Court, other than Contractor and Subcontractors.

“**Court Data**” means all data and information of the Court or Court Contractors disclosed to or accessed by Contractor or Subcontractors, including all such data and information relating to the Court and their respective contractors, agents, employees, technology, operations, facilities, markets, products, capacities, systems, procedures, security practices, court records, court proceedings, research, development, business affairs and finances, ideas, concepts, innovations, inventions, designs, business methodologies, improvements, trade secrets, copyrightable subject matter, patents, and other intellectual property and proprietary information.

“**Court Materials**” means Materials owned, licensed, made, conceived, or reduced to practice by the Court or a Court Contractor, any Materials developed or acquired separate from this Agreement, and all modifications, enhancements, derivative works, and Intellectual Property Rights in any of the foregoing.

“**Court Personnel**” means members, justices, judges, judicial officers, subordinate judicial officers, officers, employees, and agents of the Court.

“**Court Project Manager**” means the individual appointed by the Court to communicate directly with the Contractor Project Manager.

“**Court Work Locations**” means any Court facility at which Contractor provides Work.

“**Cover sheet**” refers to the first sheet or sheets of this Agreement named Cover sheet.

“Data Safeguards” means industry-standard safeguards against the destruction, loss, misuse, unauthorized disclosure, or alteration of the Court Data or Confidential Information, and such other related safeguards that are set forth in Applicable Laws, a Statement of Work, or pursuant to Court policies or procedures.

“Default” means if any of the following occurs: (i) Contractor breaches any of Contractor’s obligations under this Agreement, and this breach is not cured within ten (10) days following notice of breach or 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; (iii) Contractor makes or has made under this Agreement any representation, warranty, or certification that is or was incorrect, inaccurate, or misleading; or (iv) any act, condition, or item required to be fulfilled or performed by Contractor to (x) enable Contractor lawfully to enter into or perform its obligations under this Agreement, (y) ensure that these obligations are legal, valid, and binding, or (z) make this Agreement admissible when required is not fulfilled or performed.

“Defect” means any failure of any portion of the Work to conform to and perform in accordance with the requirements of this Agreement and all applicable Specifications and Documentation.

“Deliverables” means any Developed Materials, Contractor Materials, Third Party Materials, or any combination thereof (including those identified as “Deliverables” in a Statement of Work, together with all Upgrades thereto), as well as any other items, goods, or equipment provided pursuant to the Work (except the Licensed Software).

“Developed Materials” means Materials created, made, or developed by Contractor or Subcontractors, either solely or jointly with the Court or Court Contractors, in the course of providing the Work under this Agreement, and all Intellectual Property Rights therein and thereto, including, without limitation, (i) all work-in-process, data or information, (ii) all modifications, enhancements and derivative works made to Contractor Materials, and (iii) all Deliverables; provided, however, that Developed Materials do not include Contractor Materials.

“Documentation” means all technical architecture documents, technical manuals, user manuals, flow diagrams, operations guides, file descriptions, training materials and other documentation related to the Work; together with all Upgrades thereto.

“Effective Date” has the meaning set forth on the Cover sheet.

“Intellectual Property Rights” means all past, present, and future rights of the following types, which may exist or be created under the laws of any jurisdiction in the world: (a) rights associated with works of authorship, including copyrights, moral rights, and mask work rights; (b) trademark and trade name rights and similar rights; (c) trade secret rights; (d) patent and industrial property rights; (e) other proprietary rights in intellectual property of every kind and nature; and (f) rights in or relating to registrations, renewals, extensions, combinations, divisions, and reissues of, and applications for, any of the rights referred to in clauses (a) through (e) of this sentence.

“IT” means Information Technology.

“IT Infrastructure” means software and all computers and related equipment, including, as applicable, central processing units and other processors, controllers, modems, servers, communications and telecommunications equipment and other hardware and peripherals.

“Legal Services” means legal representation of a client by a licensed attorney.

“Licensed Software” means Contractor’s software set forth in Appendix E, including Source Code and object code versions of such software, in whatever form or media, together with all Upgrades and Documentation thereto.

“Malicious Code” means any (i) program routine, device or other feature or hidden file, including any time bomb, virus, software lock, trojan horse, drop-dead device, worm, malicious logic or trap door that may delete, disable, deactivate, interfere with or otherwise harm any of the Court’s hardware, software, data or other programs, and (ii)

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hardware-limiting, software-limiting or services-limiting function (including any key, node lock, time-out or other similar functions), whether implemented by electronic or other means.

“**Maintenance and Support Services**” means maintenance and support services provided by Contractor under section 1.9 unless otherwise provided for in this Agreement.

“**Materials**” means all inventions (whether patentable or not), discoveries, literary works and other works of authorship (including software), designations, designs, know-how, technology, tools, ideas and information.

“**non-IT**” means not related to Information Technology.

“**Parties**” means the Court and Contractor, collectively.

“**Party**” means either the Court or Contractor, as the case may be.

“**Payment Provisions**” means the document named Payment Provisions incorporated into this Agreement.

“**Project Staff**” means the personnel of Contractor and Subcontractors who provide the Work.

“**Source Code**” means human-readable program statements written by a programmer or developer in a high-level or assembly language that are not directly readable by a computer and that need to be compiled into object code before they can be executed by a computer.

“**Specifications**” means with respect to each Deliverable, Licensed Software, service, goods, or other portion of the Work, the detailed provisions and documents setting out the specifications, functionality and requirements.

“**Standard M&S Hours**” means 7am to 7 pm Pacific Time on all Business Days.

“**Statement of Work**” means one or more statements of Work to be provided pursuant to and governed under the terms of this Agreement, substantially in the form attached as Appendix A, as agreed to by the Parties.

“**Subcontractor**” means the agents, subcontractors and other representatives of Contractor providing Work hereunder who are not employees of Contractor.

“**Technical Support Incident**” means a single, indivisible problem reported or technical inquiry made regarding the Deliverable, service, Licensed Software or any other part of the Work, including without limitation user questions or Defect reports. A Technical Support Incident is only closed when mutually agreed by the parties.

“**Term**” means the term of this Agreement.

“**Termination Assistance Period**” means the period commencing upon the expiration or termination of this Agreement and each Statement of Work and expiring six (6) months thereafter, as such period may be extended by the Parties.

“**Third Party**” means any person or entity other than the Court or Contractor.

“**Third Party Materials**” means Materials that are licensed or obtained by Contractor from a Third Party.

“**Upgrades**” means all new versions and releases of, and bug fixes, error corrections, Workarounds, updates, upgrades, modifications, patches for, the Licensed Software, Deliverables, Documentation, or any other portion of the Work.

“**Work**” means each of the following, individually and collectively: the services (including the Maintenance and Support Services), Deliverables, Licensed Software, goods (including equipment) and materials provided under this Agreement, including those services and Deliverables set forth in a Statement of Work, and any incidental services, items, or responsibilities that are reasonable and customary in the industry and not specifically described in this

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Agreement (or the Statement of Work), but which are required for the performance of Contractor's obligations and delivery of services.

“Workaround” means a temporary modification to or change in operating procedures for the Work that: (i) circumvents or effectively mitigates the adverse effects of a Defect so that the Work complies with and performs in accordance with the applicable Specifications and Documentation; (ii) does not require substantial reconfiguration of the Work or any reloading of data; and (iii) does not otherwise impose any requirements that would impede an end user's efficient use of the Work.

“Work Location(s)” means any Court Work Location or Contractor Work location.

¹ Additional capitalized terms may be defined in the other Appendices, Attachments or Exhibits to this Agreement.

End of Exhibit B