

GENERAL TERMS AND CONDITIONS

1. Scope of Work; Acceptance; Prior Work.

A. Scope of Work; Statement of Work. Pursuant to a Participating Entity's Statement of Work (in a form substantially similar to the exemplar Statement of Work set forth in Exhibit 6), Contractor will perform and complete all Work set forth in a Participating Addendum, including any attachments, in compliance with the requirements of this Agreement, and to the satisfaction of Participating Entity. The Statement of Work shall, at a minimum, include:

- a) itemized list of services, Deliverables, and Work to be performed, including any requirements to perform the Work;
- b) any projected milestone schedule for the completion of the services, Deliverables, and Work;
- c) any acceptance criteria;
- d) the personnel to be assigned, along with their job classification, if applicable;
- e) the anticipated number of hours to be expended by each such person in the performance of Statement of Work;
- f) the name of Contractor's Project Lead, if applicable; along with such additional information, terms and conditions as the parties may agree upon and wish to include;
- g) a draft project plan that addresses the scope and detail of services to be performed;
- h) to the extent not provided in Exhibit 8 (Fees, Pricing and Payment Terms), any additional fees and costs that may be applicable to the Statement of Work as the parties may agree upon.

B. Acceptance.

B.1. All Work and Deliverables provided by Contractor under this Agreement are subject to written acknowledgement and acceptance by the JBE's Project Manager. The JBE's Project Manager will apply the acceptance criteria set forth in the applicable Statement of Work, (including timeliness, completeness, technical accuracy and conformance to statistical, industry or marketplace standards) to determine acceptance or non-acceptance of the Work.

B.2. The JBE's Project Manager shall use the Acceptance and Sign-off Form, in the form provided on Exhibit 7 (Acceptance and Sign-Off Form) to notify the Contractor of acceptance or non-acceptance.

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

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

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

D. Non-Exclusivity. This is a non-exclusive agreement. The JBEs reserve the right to perform, or have others perform the Work of this Agreement. The JBEs reserve the right to request bids for the Work from others or procure the Work by other means.

2. Changes in Work; Stop Work.

A. Changes in Work.

A.1. The JBEs reserve the right to require Contractor to make changes in the Work, as set forth in the applicable Statement of Work, which may include additions, deletions, or modifications to the Work, or changes in the timing or level of effort for the Work.

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

- a) a description of the proposed change and the reasons for the change;
- b) a summary of the total compensation to be paid Contractor with a

breakdown of tasks and costs, including any reduction in work or costs resulting from the change; and

c) a statement of the expected impact on schedule.

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

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

B. Stop Work.

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

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

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

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

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

3. Software License.

A. Grant of Rights.

A.1. Contractor grants to the JBE a perpetual, irrevocable, worldwide, non-exclusive license to: (i) install and use the Licensed Software for the purpose of conducting the JBE's business; and (ii) make a reasonable number of copies of the Licensed Software for archival and/or backup purposes. The JBE's rights hereunder shall permit the installation and/or reproduction and copying of the Licensed Software, or portions thereof, to the extent reasonably necessary to enable access to and use of the Licensed Software by, (i) any law enforcement, immigration, judicial or other governmental entity for purposes reasonably related to the administration of the courts of the State of California, (ii) any court user or party needing the Licensed Software for the purpose of connecting to, making use of (such as lawyers, litigants, parties and the general public) or supporting the operations of the courts of the State of California, (iii) third parties that perform processing services and/or disaster recovery services for the JBE or on behalf of JBE as long as the Licensed Software is used only as defined herein, and (iv) the JBE's service providers, but only in connection with their providing of services to the courts of the State of California. Such use and access may be directly enabled or web enabled via Internet or intranet or enabled via any other communication facility.

A.2. Notwithstanding any other provision in this Agreement, JBE third-party contractors (which shall include the agents, employees and contractors of the Judicial Council of California) may: (i) install, use and host the Licensed Software for the benefit of the JBE at the facilities of the JBE or the facilities of Contractor or third-party contractors; (ii) install and use the Licensed Software for the purpose of providing the JBE with implementation and configuration services in connection with the Licensed Software; (iii) install and use the Licensed Software for the purpose of maintaining and supporting the Licensed Software for the benefit of the JBE; and (iv) make a reasonable number of copies of the Licensed Software for archival and/or backup purposes.

B. License Restrictions; Additional Terms

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

B.2. Additional License Terms. The JBE and Contractor agree to the license terms, if any, set forth in Exhibit 4 (Licensed Software and Additional Terms), as additions to (as applicable) the terms of this Section 3.B.2. In the event that the additional terms set forth in Exhibit 4 (Licensed Software and Additional Terms) directly conflict with the terms of this Exhibit 3 (General Terms and Conditions), the terms of this Exhibit 3 shall control.

4. Maintenance and Support Services.

A. Maintenance. Except as otherwise provided in Exhibit 10 (Maintenance and Support), during the term of this Agreement Contractor shall provide the JBE with Maintenance for the Licensed Software as follows: (i) such improvements, enhancements, upgrades, updates, new releases, extensions and other changes to the Licensed Software, as and when made generally available by Contractor to its other customers, including but not limited to modifications, improvements, renamed products, correction of defects, and fixes relative to the usual, general, and ordinary use and application of the Licensed Software; (ii) updates to the Licensed Software if and as required to cause the Licensed Software to operate under new versions or releases of the JBE's then-current operating system or database platform, within a reasonable time after the general release of such new versions or releases; (iii) updates to the Licensed Software if and as required to cause the Licensed Software to support business operations of the JBEs conducted in order to comply with specific provisions of California and other applicable law, as and when such law may change from time to time during the term; and (iv) Maintenance Releases to the Licensed Software if and as required.

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

B. Installation of Maintenance Releases. The JBE agrees to install or permit the installation or implementation of all Maintenance Releases such that, after the JBE's acceptance of the Licensed Software and at all times thereafter during the term, the version of the Licensed Software in use by the JBE either (i) was first made generally

available by Contractor within thirty-six (36) months of then-current date, or (ii) is within one (1) major release of the most recent release of the Licensed Software made generally available by Contractor; provided, however that the JBE shall have the right to refuse the installation or implementation of any such Maintenance Release that necessitates: (i) re-training of the JBE's users, (ii) conversion of the JBE's case management system to a new platform or operating system, or (iii) significant reprogramming or reconfiguration of the Licensed Software. During the term of this Agreement, the JBE may request that Contractor provide, pursuant to a separate agreement for professional services, a Maintenance Release for the Licensed Software to permit the JBE to implement a new or different database platform or operating system for the JBE's case management system. If Contractor refuses to provide such Maintenance Release within a commercially reasonable period, then the JBE may terminate this Agreement or the applicable Participating Addendum in accordance with Section 26.A ("Termination for Cause by Court").

C. Support Services. After the expiration of the Warranty Period set forth in Section 22.B.2 (Licensed Software Warranty) and thereafter during the term of this Agreement, Contractor shall provide to the JBE the Support Services, via such method as is appropriate given the nature of the required Support Services, including without limitation telephone support, remote access support or in-person support at the JBE's location or such other location as JBE may specify, all as more particularly described in Section 1 of Exhibit 10 (Maintenance and Support).

D. Support Service Levels. In the event that the Licensed Software fails to perform in accordance with the Specifications or otherwise contains errors, defects, bugs, nonconformity or malfunctions, the JBE shall notify the Contractor of such condition, and Contractor shall respond to the JBE's requests for Support Services in accordance with the Service Levels set forth in Exhibit 10 (Maintenance and Support). The JBE shall assign the applicable Service Level, as described in Exhibit 10 (Maintenance and Support) to each request for Support Services and Contractor shall respond according to the applicable response requirements set forth in Exhibit 10 (Maintenance and Support), based on the severity of the error, defect, bug, nonconformity or malfunction designated by the JBE. Contractor shall perform such correction or repair at no additional charge to the JBE. In the event that Contractor is unable to complete the corrections or repairs necessary to permit the Licensed Software to perform and conform to the Specifications or to correct such error, bug, nonconformity or malfunction, then the parties shall invoke the Escalation Procedure set forth in Exhibit 10 (Maintenance and Support).

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

5. [INTENTIONALLY OMITTED].

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

7. Audit; Retention of Records.

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

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

8. Assignment. Contractor will not assign its rights or obligations under this Agreement (including any Participating Addendum), either in whole or in part, without the prior written consent of the Establishing JBE. Any attempted assignment will be void or invalid. This Agreement binds the parties as well as their heirs, successors, and assignees.

9. Choice of Law; Jurisdiction and Venue.

A. Choice of Law. This Agreement and performance under it will be exclusively governed by the laws of the State of California without regard to its conflict of law provisions.

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

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

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

disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.

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

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

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

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

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

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

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

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

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

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

I. Domestic Partners, Spouses, Gender, and Gender Identity Discrimination. If the contract value is \$100,000 or more: Contractor certifies that it is in compliance with: (i) PCC 10295.3, which, subject to specified exceptions, generally prohibits discrimination in the provision of benefits between employees with spouses and employees with domestic partners, or discrimination between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex, or discrimination between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees; and (ii) PCC 10295.35, which places limitations on contracts with contractors that discriminate in the provision of benefits on the basis of an employee's or dependent's actual or perceived gender identity.

J. Expatriate Corporation. Contractor certifies that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC 10286.1, and is eligible to contract with the JBEs. (Expatriate corporations are certain foreign incorporated entities that are publicly traded in the United States. For additional information, see PCC 10286.1.)

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

a) No apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the JBE under this Agreement have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that it adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and PCC 6108.

b) Contractor cooperates fully in providing reasonable access to Contractor's records, documents, agents, and employees, and premises if reasonably required by authorized officials of the Department of Industrial Relations, or the Department of

Justice to determine Contractor's compliance with the requirements under this section and shall provide the same rights of access to the JBE.

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

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

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

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

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

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

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

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

the parties to reflect any reduction in funds.

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

11. Conflict of Interest; Prohibition Against Gratuities.

A. Conflict of Interest.

A.1. Contractor has no interest that would constitute a conflict of interest under (i) PCC 10365.5, 10410 or 10411; (ii) Government Code sections 1090 et seq. or 87100 et seq.; or (iii) California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with the JBEs.

A.2. Contractor and its Subcontractors and employees will not participate in proceedings that involve the use of JBE funds or that are sponsored by a JBE if the Contractor, its Subcontractors, or their employees, principals, partners, family members, or organizations have a financial interest in the outcome of the proceedings.

A.3. Contractor and its Subcontractors and employees will not engage in actions resulting in, or creating the appearance of:

- a) use of an official position with the government for private gain;
- b) preferential treatment to any particular person associated with this Work or Agreement;
- c) impairment of a JBE's independence or impartiality;
- d) a decision made outside official channels; or
- e) adverse effects on the confidence of the public in the integrity of the JBE.

B. Prohibition Against Gratuities.

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

B.2. For any breach or violation of this covenant, the JBE has the right to terminate the Agreement or the Participating Addendum, as applicable, for cause, either in whole or in part. Any loss or damage sustained by a JBE in procuring, on the open market, replacement goods or services that Contractor agreed to provide, will be borne and paid for by Contractor. The JBE's rights

and remedies under this provision are in addition to any other rights and remedies provided by law or under this Agreement.

12. Consideration; Payment. The consideration paid to Contractor is the entire compensation for all Work performed under this Agreement, including all of Contractor's approved reimbursable expenses incurred, such as travel and per diem expenses, unless otherwise expressly provided, as set forth in Exhibit 8 (Fees, Pricing and Payment Terms).

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

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

13. Contractor Status.

A. Independent Contractor.

A.1. Contractor, Subcontractors, and their officers, agents, employees, and all others acting on behalf of Contractor for this Work, act as independent contractors and not as JBE agents, officers or employees. Contractor has no authority to bind or incur any obligation on behalf of the JBEs.

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

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

B. Contractor's Employees.

B.1. Contractor's employees will be entirely and exclusively under the direction, supervision, and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring, and termination, or any other employment issues or requirements of law, will be determined by Contractor.

B.2. Contractor will issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's employees, consultants, and independent contractors.

B.3. If the Internal Revenue Service or any other federal or state governmental entity should investigate or challenge Contractor's independent status with respect to JBE, the parties agree that (i) each will inform the other party of such investigation or challenge; and (ii) JBE will have the right, but not the obligation, to participate in any discussion or negotiation occurring with the federal or state entity, regardless who initiates such discussions or negotiations.

B.4. Contractor will indemnify and hold the JBE harmless from all claims, costs, and liabilities resulting from third-party actions alleging an employment relationship between the JBE and any Contractor or Subcontractor personnel.

C. Exclusive Control of Means and Method of Performance. Contractor will determine the method, details, and means of performing or supplying the Work under this Agreement. Contractor will be responsible to Participating Entities only for the requirements and results specified in this Agreement and more particularly as set forth in the Participating Entity's Statement of Work, and will not be subjected to the JBE's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement or any Participating Addendum. Contractor will have the "right to control" and bear the sole responsibility for the job site conditions and safety.

D. Permits, Laws, and Regulations.

D.1. Contractor must observe and comply with all applicable laws, rules, and regulations affecting the Work. Contractor will, at all times, obtain and keep in full force and effect, all permits and licenses necessary to accomplish the Work. Such permits and licenses will be made available to the JBE, upon request.

D.2. Contractor will promptly provide Notice to the JBE of any conflict discovered between the Agreement or any applicable Participating Addendum and any applicable laws, rules, regulations, and/or permits and licenses, and await resolution of the conflict. If Contractor proceeds with the Work in question without resolution of the conflict, Contractor will be solely liable for any costs, fines, penalties, or damages that accrue, including costs for remedial work required to comply with such requirements.

E. Subcontracting.

E.1. Contractor will not engage a Subcontractor to perform any portion of the Work, without the express written consent of the affected Participating Entity. Any subcontracting without the Participating Entity's written consent is a material breach of this Agreement and the applicable Participating Addendum.

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

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

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

A. Escalation.

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

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

- a) provide detailed factual information;
- b) identify the specific provisions in this Agreement or applicable Participating Addendum on which any demand is based;
- c) advise if the demand involves a cost adjustment and, if so, provide the exact amount, accompanied by all supporting records; and
- d) attach a declaration that the demand is made in good faith, the supporting data are accurate and complete, and the amount requested properly reflects the necessary adjustment. Notice will be signed by an authorized representative of the aggrieved party.
- e) If the negotiations do not result in resolution of the dispute within forty- five (45) calendar days after receipt of the Notice, the parties agree to mediation prior to any party initiating an legal action or process in court.

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

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

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

15. Force Majeure.

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

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

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

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

16. Indemnification.

A. To the fullest extent permitted by law, Contractor will indemnify, hold harmless, and defend (with counsel satisfactory to the indemnified party) the JBEs and their respective agents, officers, and employees from and against any and all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorneys' fees, arising or resulting from, or in connection with, the performance or breach of this Agreement and any Participating Addendum by Contractor or its officers, employees, agents, representatives, or Subcontractors. 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 services and Work. Contractor shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement that would bind an indemnified party, without the affected JBE's prior written consent, which consent shall not be unreasonably withheld; and such JBE shall have the right, at its option and expense, to participate in the defense and/or settlement of a claim through counsel of its own choosing. Contractor's duties of indemnification exclude indemnifying a party for that portion of losses and expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party.

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

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

17. Insurance Requirements.

17.1 The Contractor shall provide to each JBE and maintain the following types of insurance in full force during the term of this Agreement and each Participating Addendum:

- 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 must include workers' compensation to meet the minimum requirements of the California Labor Code, and it must provide coverage for employer's liability bodily injury at minimum limits of \$1,000,000 per accident or disease.
- C.** *Automobile Liability.* 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.* 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.

- 17.2 Umbrella Policies.** Contractor may satisfy basic coverage limits through any combination of basic coverage and umbrella insurance.
- 17.3 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.
- 17.4 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.
- 17.5 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.
- 17.6 Certificates of Insurance.** Before Contractor begins performing services and Work, Contractor shall give the Establishing JBE (and on request, any Participating Entity) certificates of insurance attesting to the existence of coverage, and stating that the policies will not be canceled, terminated, or amended to reduce coverage without thirty (30) days’ prior written notice to the Establishing JBE and any Participating Entity.
- 17.7 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.
- 17.8 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.

17.9 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.

17.10 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.

18. Confidentiality, Non-Disclosure, and Data Security.

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

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

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

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

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

F. JBE Data Security and Access.

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

Contractor shall implement and maintain the industry-standard safeguards (including appropriate administrative, physical, technical, and procedural safeguards) against the destruction, loss, misuse, unauthorized disclosure or access, or alteration of JBE Data, and Contractor shall comply with privacy and data security requirements set forth in applicable laws, this Agreement, or in the JBE's policies or procedures. Confidential, sensitive, or personally identifiable information shall be encrypted in accordance with the industry standards, applicable laws, this Agreement, and JBE policies and procedures.

If Contractor provides Hosted Services, Contractor shall:

- ensure that any hosting facilities (including computers, network, data storage, backup, archive devices, and the data storage media), and disaster recovery facilities (if applicable) shall be located in the continental United States;
- provide periodic full backup of all JBE Data
- provide periodic incremental backup of all JBE Data
- have the capability to recover data from the JBE Data backup copy
- have the capability to export JBE's raw data in human readable and machine readable format, and have the capability to promptly provide JBE Data to JBE upon

its request

- have the capability to import JBE's data (subject to Contractor's confidentiality obligations)
- maintain recoverable secure backups offsite in a fire-protected, secure area, geographically separate from the primary datacenter.
- have the capability to import JBE's data (subject to Contractor's confidentiality obligations)
- maintain recoverable secure backups offsite in a fire-protected, secure area, geographically separate from the primary datacenter.

[Contractor to insert proposed terms for:

- *encryption standards for data backups*
- *physical medium and other specifications for data backup hardware or software*
- *retention periods of archived data backups*
- *uninterruptible power supply for servers hosting JBE Data*
- *service levels and response times for data backup retrieval/data restoration*
- *snapshot backups of JBE Data every [] minutes]*

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

To the extent that California Rule of Court 2.505 applies to this Agreement or any Participating Addendum, Contractor shall provide access and protect confidentiality of court records as set forth in that rule.

G. Data Breach.

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

Contractor will provide daily updates, or more frequently if required by the JBE, regarding findings and actions performed by Contractor until the Data Breach has

been effectively resolved to the JBE's satisfaction. Contractor shall conduct an investigation of the Data Breach and shall share the report of the investigation with the JBE. The JBE and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Contractor shall cooperate fully with the JBE, its agents and law enforcement.

H. Security Assessments

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

I. Data Requests

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

19. Ownership of Intellectual Property.

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

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

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

20. Modification. No modification or change to this Agreement or any Participating Addendum will be valid without written approval by the affected JBE, in the form of an Amendment, including any changes to a Statement of Work.

21. Prohibited Bids for End Product of this Agreement. No person, firm, or subsidiary thereof which has been awarded a consulting services agreement may submit a bid for, or be awarded an agreement for, the provision of services, procurement of Materials or Data, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of this Agreement. This provision will not apply to any person, firm, or subsidiary thereof, which is awarded a subcontract under this Agreement in an amount no more than ten percent of the total monetary value of this Agreement.

22. Standard of Performance; Warranties.

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

B. Warranties.

B.1. Services Warranty. Contractor warrants and represents that the Work and all Deliverables furnished to the JBE will conform to the requirements of this Agreement and the JBE's Participating Addendum for a period of one (1) year from the date of first productive use of the Work or Deliverable, as applicable, and that such Work and Deliverables will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship, and, to the extent not manufactured pursuant to detailed designs furnished by the JBE, free from defects in design. The JBE's approval of designs or specifications furnished by Contractor will not relieve Contractor of its obligations under this warranty.

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

appropriately adapted, as and to the extent necessary, to operate effectively using the JBE's existing database software program as installed as of the effective date of the Participating Addendum.

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

B.4. Four-Digit Date Compliance. Contractor represents and warrants that it will provide only Four-Digit Date Compliant deliverables and/or services to the JBE. "Four-Digit Date Compliant" deliverables and services can accurately process, calculate, compare, and sequence date data, including, without limitation, date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Agreement and does not limit the generality of warranty obligations set forth elsewhere in this Agreement.

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

B.6. Warranty of Title. Contractor warrants and represents that (i) it has good title to the Licensed Software; (ii) it has the absolute right to grant to the JBE the licenses granted hereunder; (iii) the JBE shall quietly and peacefully possess and use any Licensed Software provided hereunder, subject to and in accordance with the provisions of this Agreement; and (iv) Contractor shall be responsible for, has and shall have full authority to license all proprietary and/or third party software modules, algorithms and protocols that are incorporated into the Licensed Software (the "Title Warranty").

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

B.8. Effect of Breach of Warranty. If, at any time during the term of this Agreement or any Participating Addendum, Contractor breaches any warranty under this Section 22, the JBE shall promptly notify Contractor in writing of such alleged breach of warranty, and shall include if applicable the information required pursuant to Exhibit 10 (Maintenance and Support). If the breach relates to the Licensed Software Warranty or Virus Protection Warranty, then Contractor shall correct any such deficiency in the Licensed Software or the Hosted Services in accordance with the Service Level criteria set forth in Exhibit 10 (Maintenance and Support). If the breach relates to Section 22.B.5 (Warranty of Law), then Contractor shall promptly correct the identified deficiency. If the breach relates to Section 22.B.6 (Warranty of Title), then Contractor shall promptly either: (a) procure for the JBE the right to continue use of the Licensed Software at no additional charge to the JBE, (b) modify such Licensed Software to avoid the claimed infringement (provided that such modification does not adversely affect the JBE's intended use of the Licensed Software) at no additional charge to the JBE, or (c) replace said Licensed Software with an equally suitable, compatible and functionally equivalent non-infringing software, including installation and configuration as required, at no additional charge to the JBE. If none of the foregoing options is practicable, then the JBE may terminate this Agreement or applicable Participating Addendum as hereinafter provided in this section. If the breach relates to Section 22.B.7 (Support Services Warranty), then Contractor shall promptly re-perform the nonconforming Support Services, until such time as the nonconformance is corrected or the parties otherwise agree in writing. If after reasonable efforts Contractor is unable to correct any such breach of warranty as described in this section, and the resulting non-performance or deficiency materially affects the ability of the JBE to utilize the Licensed Software, then the JBE may terminate this Agreement in accordance with Section 26.A (Termination for Cause), subject to the transition provisions of Exhibit 12 (Transition Services), in which event the JBE shall have all remedies available at law or equity.

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

23. Personnel Requirements.

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

endeavor to retain the same individuals during the performance of Work.

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

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

24. Background Checks.

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

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

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

25. Survival. All provisions of this Agreement, which by their nature or intent, extend beyond the term of this Agreement will survive termination or expiration of this Agreement, including, without limitation, the following provisions: License, Assignment, Audit Rights and Retention of Records, Confidentiality, Indemnification, Limitation of Liability, Warranties and Transition.

26. Termination; Term of Agreement.

A. Termination for Cause. The 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 ten (10) 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 incorrect, inaccurate, or misleading. All costs to the JBE arising from Contractor's default, including costs to complete or correct the Work, will be deducted from any sum due Contractor. Contractor will not be entitled to recover overhead or profit on the uncompleted portions of the Work.

B. Termination for Convenience.

B.1. The 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. Upon receipt of the termination Notice, Contractor will promptly discontinue Work as specified in the Notice.

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

C. Termination Due to Changes in Budget or Law. Each JBE's payment obligations are subject to annual appropriation and the availability of funds. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of this Agreement or Participating Addendum. Funding beyond the current appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement (including a Participating Addendum). The Establishing JBE may terminate this Agreement (and any JBE may terminate a Participating Addendum), and each JBE may limit Contractor's Work (and reduce proportionately Contractor's fees) upon Notice to Contractor without prejudice to any right or remedy of the 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

D. Effect of Termination.

D.1. Upon any expiration or termination, the JBE will have the right to take possession of any materials, equipment, Deliverables, and other Work including partially completed Work. Contractor will immediately assign to the JBE all of

Contractor's right, title, and interest in and to such Work and related materials and work product, and any and all intellectual property rights.

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

D.3. **Transition services.** Contractor shall provide the transition services and procedures set forth on Exhibit 12 (Transition Services), upon request of the JBE, in the event of any termination of this Agreement.

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

F. Term and Termination.

(a) The term ("Term") of this Agreement shall commence on the Effective Date and terminate on the Expiration Date set forth on the first page of this Agreement (the "Initial Term"), unless terminated earlier in accordance with the terms of this Section 26. The Establishing JBE will have the right to extend the term of this Agreement one

additional five-year option period (the "Option Term"). 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.

(b) Participating Addenda. The termination of this Agreement shall not result in the termination of any outstanding Participating Addendum that has not been terminated by the Participating Entity, 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 26; provided, however, that the term of such Participating Addendum may not exceed the Expiration Date of this Agreement. Execution of any Participating Addendum by a Participating Entity and Contractor must be completed before the termination or expiration of this Agreement.

27. Time is of the Essence. Time of performance is of the essence in the performance of services by Contractor under this Agreement.

28. Waiver; Severability.

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

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

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

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

A. Assignment. Contractor shall assign to the 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 the Contractor.

B. Reimbursement. If the JBE receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, the Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon

demand, recover from the JBE any portion of the recovery, including treble damages, attributable to overcharges that were paid by the 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.

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

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

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

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

34. Union Activities. Contractor agrees that no JBE funds received under this Agreement will be used to assist, promote or deter union organizing during the Term. If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no JBE funds were used for those expenditures. Contractor will provide those records to the Attorney General upon request.

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

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

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

38. Entire Agreement.

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

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

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

39. Notices. Notices regarding this Agreement must be sent to the following address and recipient:

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

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

40. Hosted Services. Notwithstanding any provision in this Agreement to the contrary, to the extent that any Hosted Services are provided under this Agreement or a Participating Addendum, then in addition to Contractor’s obligations regarding the Hosted Services, the Contractor’s obligations regarding the Licensed Software (including without limitation, support services, maintenance services, transition services, indemnification, warranties, and JBE rights of use/access) shall also apply to the Hosted Services.