

ATTACHMENT 2: CONTRACT TERMS AND CONDITIONS

JUDICIAL COUNCIL OF CALIFORNIA

MASTER AGREEMENT FOR SERVICES

AGREEMENT NUMBER

TBD

FEDERAL TAX IDENTIFICATION NUMBER

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

2. This Agreement is effective as of October 31, 2019 (“Effective Date”) and expires on October 30, 2021 (“Expiration Date”), unless extended. This Agreement includes one or more options to extend through October 31, 2024. The process for exercising an option to extend the Agreement is set forth in Appendix C, section 5.

3. The full title of this Agreement is: Master Agreement for **Translation Services**.

The title listed above is for administrative reference only and does not define, limit, or construe the scope or extent of this Agreement.

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

Appendix A – Work to be Performed

Appendix B – Payment Provisions

Appendix C – General Provisions

Appendix D – Defined Terms

Appendix E – Participating Addendum

Appendix F – Unruh Civil Rights Act and California Fair Employment and Housing Act Certification

APPENDIX A

WORK TO BE PERFORMED

1. Background and Purpose.

- 1.1 The purpose of this Agreement is to contract for the translation, formatting, and field testing of documents into one or more languages as further described in this Appendix A.
- 1.2 This agreement sets forth the terms and conditions that apply to Contractor's provision of Work to the JBEs. "Work" shall mean the Services, and Deliverables as further described herein. This Agreement does not obligate a JBE to place any orders for Work under this Agreement and does not guarantee Contractor a specific volume of orders.
- 1.3 Each JBE may at its option place individual orders for Work under this Agreement by entering into a Participating Addendum (in the form attached as Appendix E to this Agreement) with Contractor.
- 1.4 All rights, title, and interest (including copyrights) in and to the source documents and resulting translated documents will remain with or vest with the JBE, which will have the right to distribute the documents at will to the general public and other JBEs, regardless of their use of this Agreement.
- 1.5 This Agreement is a nonexclusive agreement. Each JBE reserves the right to provide, or have others provide the Work. Contractor shall reasonably cooperate with any third parties retained by a JBE to provide the Work.
- 1.6 Upon request by a JBE, Contractor will provide a list of certification(s) and memberships(s) it holds with professional translation associations, and the effective date of each
- 1.7 All Work must be performed within the United States. Offshore translations are not allowed under the terms of this Agreement.

2. Services and Deliverables.

- 2.1 **Description of Services.** As ordered by each JBE, Contractor shall perform the following services ("Services") for the JBEs:
 - A. Contractor will provide translation services described herein, including, but not limited to translation, formatting, and field testing of the translations of legal forms; translation and formatting foreign legal documents and contracts; translation and formatting of posters, brochures and other informative leaflets/notices; translation of web content; translation of the text interface of software applications; and translation and formatting of correspondence.
 - B. Contractor will provide translation services between English and the following languages:
 - Arabic
 - Armenian (Eastern)
 - Armenian (Western)

- Chinese Simplified
 - Chinese Traditional
 - Farsi
 - Hmong
 - Khmer
 - Korean
 - Punjabi
 - Russian
 - Spanish
 - Tagalog
 - Vietnamese
- C. For translations into Spanish, Contractor must use the glossary/style guide referenced at the following web site: <https://www.courts.ca.gov/selfhelp-glossary.htm?rdeLocaleAttr=es> unless otherwise agreed in writing by the JBE requesting the Work.
- D. For translations into languages other than Spanish, Contractor must follow the terminology, register and dialect style of existing translations of Judicial Council forms in those languages, referenced at <http://www.courts.ca.gov/forms.htm> unless otherwise agreed in writing by the JBE requesting the Work.
- E. For translations into any language, Contractor must also follow any subject matter specific glossaries and employ any standardized terminology provided by the JBE.
- F. No machine generated translations are allowed.
- G. The format of all translated forms must exactly match the English version unless otherwise agreed in writing.
- H. Contractor will provide translated documents/forms in the same format as the source document unless specified otherwise by the JBE. Such formats include but are not limited to the following: Microsoft Word, Microsoft Excel, Microsoft PowerPoint, Adobe PDF or their equivalents. Contractor must be able to convert Microsoft files into PDF format. The PDF format does not include documents that are fillable online.
- I. Contractor will receive and transmit drafts and final versions of forms from and to the JBE in writing, which includes secure e-mail, electronic file attachments to e-mail, web portal, or if requested by the JBE, by facsimile, USPS mail, or courier delivery service.
- 2.2 Description of Deliverables.** As ordered by each JBE, Contractor shall deliver to the JBE documents, reports, audio recordings, and other Materials as may be requested.

3. Ordering

- 3.1** Each JBE shall have the right to place orders for any of the Work. A JBE may place orders for Work by entering into a Participating Addendum with Contractor in the form attached as Appendix E to this Agreement ("Participating Addendum"). Pricing for Work shall be in accordance with the prices set forth in this Agreement. After a Participating Addendum

has been presented to the Contractor by a JBE, the Contractor shall acknowledge, sign, and perform under the Participating Addendum in a timely manner. Contractor shall provide the Work for each JBE in accordance with the terms of this Agreement and the applicable Participating Addendum.

- 3.2** Each Participating Addendum constitutes and shall be construed as a separate, independent contract between Contractor and the JBE signing such Participating Addendum, subject to the following: (i) each Participating Addendum shall be governed by this Agreement, and the terms in this Agreement are hereby incorporated into each Participating Addendum; (ii) the Participating Addendum may not alter or conflict with the terms of this Agreement, or exceed the scope of the Work provided for in this Agreement; and (iii) the term of the Participating Addendum may not extend beyond the expiration date of the Agreement. The Participating Addendum and this Agreement shall take precedence over any terms and conditions included on Contractor's invoice or similar document.
- 3.3** Under a Participating Addendum, the JBE may at its option place orders for the Work using a Purchase Order, subject to the following: such Purchase Order is subject to and governed by the terms of the Master Agreement and the Participating Addendum, and any term in the Purchase Order that conflicts with or alters any term of the Master Agreement (or the Participating Addendum) or exceeds the scope of the Work provided for in this Agreement, will not be deemed part of the contract between Contractor and JBE. Subject to the foregoing, the Participating Addendum shall be deemed to include such Purchase Orders.
- 3.4** The JBE signing the Participating Addendum shall be solely responsible for: (i) the acceptance of and payment for the Work under such Participating Addendum; and (ii) its obligations and any breach of its obligations. Any breach of obligations by a JBE shall not be deemed a breach by any other JBE. Under no circumstances shall a JBE have any liability or obligation except pursuant to a Participating Addendum signed by such JBE, nor shall any breach by a JBE under a Participating Addendum give rise to a breach under any other Participating Addendum or be deemed grounds for termination of this Agreement by Contractor. The Establishing JBE shall have no liability or responsibility of any type related to: (i) any other JBE's use of or procurement through this Agreement (including any Participating Addendum), or (ii) such JBE's business relationship with Contractor. The Establishing JBE makes no guarantees, representations, or warranties to any Participating Entity.
- 3.5 Order Requirements for Contractors.**
 - A.** Contractor will establish an individual account for any JBE that elects to place an order with Contractor.
 - B.** Contractor will maintain and provide Participating Entities an e-mail address with a form of acknowledgement of receipt for ordering, inquiries, and customer service. Contractor will acknowledge receipt of orders within one (1) business day.

Contractor will state the maximum attachment size limit and alternatives for the JBEs for transmitting files that are larger than the maximum allowed.

- C. Contractor will receive and transmit drafts and completed work from and to the JBE by secure electronic file attachments to e-mail in Microsoft Word and/or Adobe Acrobat “pdf” file formats or facsimile as specified by the JBE.
- D. Contractor will deliver finalized files by the agreed deadline using the JBE preferred delivery method (FTP, Drive, or secure e-mail).

3.6 Customer Service. Contractor’s customer service process will ensure that all customer service issues are addressed in a consistent and expeditious manner. Contractor’s customer service organizational structure and process must include, at a minimum:

- A. An explicit process for registering a complaint or asking questions about the Participating Addendum, the Work or communications with Contractor;
- B. A contact person identified by position in the company (phone, email, fax, etc.) who is designated to receive customer service complaints, questions or issues;
- C. A follow-up process that acknowledges receipt of the customer service communication and indicates when Contractor will respond;
- D. Internal procedures to track customer service contacts, issues and resolution; and
- E. An escalation process when necessary to resolve a complaint or issue.

3.7 Reports. Contractor will provide to the Judicial Council Project Manager quarterly reports that include a summary of the Work ordered, including the ordering JBEs and the total value ordered during the quarter reported per JBE. Quarterly reports must be provided no later than thirty (30) business days after the end of each quarter and will include an accounting of completed and paid projects as well as work in progress with payment still pending.

4. Right to Initial Review of Translation. Upon delivery of the work the JBE reserves the right to review translations and request changes to conform terminology with a Judicial Council or JBE-supplied glossary of terms; to conform the titles of Judicial Council forms with current foreign language titles; and to ensure accuracy of translation of legal terminology, based on the California legal context. Contractor agrees to make changes, at no charge, which shall not constitute more than 10% of the total number of words of the translated text.

5. JBE Options Upon Delivery of Work. Upon receipt of the Work, the JBE may accept or reject the Services and Deliverables in accordance with criteria enumerated in this section. The Services and Deliverables must be accepted by the JBE prior to payment. Contractor will not be paid for any rejected Services or Deliverables.

5.1 Acceptance Criteria for Work (“Criteria”) provided by the Contractor pursuant to this Agreement:

- A. Timeliness: The Work was delivered on time;
- B. Completeness: The Work represents a full translation of the source document or a complete audio file; and
- C. Technical accuracy: The Work contains an accurate translation in accordance with the requirements stated in section 2.1 above and, if applicable, is formatted in accordance with subparagraph G. of section 2.1 above.

5.2 Contractor shall provide the Work to the JBE, in accordance with this Agreement, the Participating Addendum and any direction provided by the JBE's Project Manager. The JBE may, at its sole discretion, use the attached Acceptance and Signoff Form to notify Contractor of the acceptance of the Services and Deliverables.

5.3 All Services and Deliverables are subject to acceptance by the JBE. The JBE may reject any Services or Deliverables that (i) fail to meet applicable requirements or specifications, including acceptance criteria, (ii) are not as warranted, or (iii) are performed or delivered late (without prior consent by the JBE). If the JBE rejects any Service or Deliverable (other than for late performance or delivery), Contractor shall modify such rejected Service or Deliverable at no expense to the JBE to correct the relevant deficiencies and shall redeliver such Service or Deliverable to the JBE within ten (10) business days after the JBE's rejection, unless otherwise agreed in writing by the JBE. Thereafter, the parties shall repeat the process set forth in this section until the JBE accepts such corrected Service or Deliverable. The JBE may terminate the portion of the Work that relates to a rejected Service or Deliverable at no expense to the JBE if the JBE rejects that Service or Deliverable (i) for late performance or delivery, or (ii) on at least two (2) occasions for other deficiencies.

5.4 If the JBE rejects the Work provided, the JBE's Project Manager shall submit to Contractor a written rejection, describing in detail the failure of the Work as measured against the Criteria. The JBE may, at its sole discretion, use the attached Acceptance and Signoff Form to notify Contractor of the rejection of the Services and Deliverables.

- A. If the JBE rejects the Work, Contractor shall have a period of ten (10) business days from receipt of the Notice of rejection to correct the stated failure(s) to conform to the Criteria.
- B. If the JBE's Project Manager requests further change, Contractor shall meet with the JBE's Project Manager, within three (3) business days of such request, to discuss changes for the final submission of the Work. Contractor shall provide the Work within three (3) business days after this meeting, unless another timeframe is agreed upon by the JBE and Contractor, at which time the Work will be accepted or the question of its acceptability referred to the JBE's Court Executive Officer, or designee, and a principal of Contractor, as set forth in subparagraph C below.
- C. If agreement cannot be reached between the JBE's Project Manager and Contractor on the Work's acceptability, a principal of the Contractor and the JBE's Court Executive Officer, or designee, shall meet to discuss the problem. If agreement cannot be reached, in the reasonable judgment of the JBE's Court Executive Officer, or designee, and/or Contractor fails to cure such deficiencies that are perceived in the Work to the reasonable satisfaction of the JBE's Court

Executive Officer, or designee, in the reasonable time established by the JBE's Court Executive Officer, or designee, the JBE may finally reject the Work and will notify Contractor in writing of such action and the reason(s) for so doing. Upon rejection of the Work, the JBE may terminate the applicable Participating Addendum pursuant to the terms of Appendix C, Section 7 - Termination.

6. **Timeline.** Contractor must perform the Services and deliver the Deliverables in a timely manner as required by the JBE.
7. **Project Managers.** A JBE Project Manager will be designated on each Participating Addendum. The Establishing JBE's project manager is: **Bonnie Hough**. A JBE may change its project manager at any time upon notice to Contractor without need for an Amendment to this Agreement or the applicable Participating Addendum. Contractor's project manager is: **TBD**. Subject to written approval by the Establishing JBE, Contractor may change its project manager without need for an Amendment to this Agreement.
8. **Service Warranties.** Contractor warrants to the JBEs that: (i) 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 provided under this Agreement; and (ii) the Work will be performed in the most cost-effective manner consistent with the required level of quality and performance. Contractor warrants that each Deliverable and the Services will conform to the requirements of this Agreement and all applicable specifications and documentation. The foregoing warranty shall commence upon the JBE's acceptance of such Deliverable or Service, and shall continue for a period of one (1) year following acceptance. In the event any Deliverable or Service does not conform to the foregoing warranty, Contractor shall promptly correct all nonconformities to the satisfaction of the JBE.
9. **Resources.** Contractor is responsible for providing any and all facilities, Materials and resources (including personnel, equipment, tools and software) necessary and appropriate for performance of the Work and to meet Contractor's obligations under this Agreement.
10. **Commencement of Performance.** This Agreement is of no force and effect until signed by both parties and all Establishing JBE-required approvals are secured. Any commencement of performance prior to Agreement approval (and approval by a JBE of a Participating Addendum) shall be at Contractor's own risk.
11. **Stop Work Orders.**
 - 11.1 Each JBE may, at any time, by Notice to Contractor, require Contractor to stop all or any part of the Work being provided to such JBE for a period up to ninety (90) days after the Notice is delivered to Contractor, and for any further period to which the JBE and the Contractor may agree ("Stop Work Order"). The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this provision. Upon receipt of the Stop Work Order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Stop Work Order during the period of stoppage. Within ninety (90) days after a Stop Work Order is delivered to Contractor, or within any extension of that period to which the parties shall have agreed, the JBE shall either (i) cancel the Stop Work Order; or (ii) terminate

the Work covered by the Stop Work Order as provided for in Appendix C, section 7 (Termination) of this Agreement.

- 11.2 If a Stop Work Order issued under this provision is canceled or the period of the Stop Work Order or any extension thereof expires, Contractor shall resume the performance of the Work. The JBE shall make an equitable adjustment in the delivery schedule and the Participating Addendum shall be modified, in writing, accordingly, if:
 - A.** The Stop Work Order results in an increase in the time required for performance of any part of the Participating Addendum; and
 - B.** Contractor requests an equitable adjustment within thirty (30) days after the end of the period of stoppage.
- 11.3 The JBEs shall not be liable to Contractor for loss of profits because of a Stop Work Order issued under this provision.

**ATTACHMENT 1
ACCEPTANCE AND SIGNOFF FORM**

Description of Services or Deliverables provided by Contractor:

Date submitted to the JBE: _____

The Services or Deliverables are:

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

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

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

Please note level of satisfaction (optional):

Poor Fair Good Very Good Excellent

Comments, if any:

The Services or Deliverables listed above are accepted.

The Services or Deliverables listed above are rejected.

Name: _____

Title: _____

Name of JBE: _____

Date: _____

END OF ATTACHMENT

APPENDIX B PAYMENT PROVISIONS

1. General.

- 1.1 Subject to the terms of this Agreement, Contractor shall invoice the JBE, and the JBE shall compensate Contractor, as set forth in this Appendix B.
- 1.2 The amounts specified in this Appendix shall be the total and complete compensation to be paid to Contractor for its performance under this Agreement. Contractor shall bear, and the JBE shall have no obligation to pay or reimburse Contractor for, any and all other fees, costs, profits, taxes or expenses of any nature that Contractor incurs.
- 1.3 Translations shall be billed according to the number of English words in the source document. English word counts will be determined by using Microsoft Word's word count feature.
- 1.4 Formatting, modifications, and field testing work shall be billed by the hour.
- 1.5 All prices will remain fixed during the Initial Term. The Establishing JBE may negotiate price adjustments during the Option Term(s) and any agreed upon price adjustments will be set forth in a written Amendment to this Agreement. Notwithstanding the foregoing, any increase in prices for the Option Terms shall not exceed the price increase limits set forth in Appendix B, section 5.
- 1.6 Contractor shall not request nor shall the JBEs consider any reimbursement for non-production work including but not limited to time spent traveling to and from the job site or any living expenses.
- 1.7 No expenses relating to the Services and Deliverables shall be reimbursed by the JBEs. All fees and charges noted in this Agreement are inclusive of any and all anticipated travel, lodging, transportation, clerical support, materials, fees, overhead, profits, and other costs and/or expenses incidental to the performance of the Work provided under this Agreement.
- 1.8 The JBEs will not make any advance payments for Work to be performed under this Agreement. When making a payment tied to the acceptance of Deliverables, the JBE shall have the right to withhold up to fifteen percent (15%) for each such payment until the JBE accepts the final Deliverable.

2. Definitions and Pricing Structure of Services

- 2.1 Translation.** For purposes of this Agreement, translation is defined as the rendering of a written English source document into another written language. Translations shall be billed at a per-word rate, according to the number of English words in the source document and in accordance with the agreed upon turnaround time. English word counts will be determined by using Microsoft Word's word count feature. The turnaround times are set forth below.

2.2 Modifications. For purposes of this Agreement, modification of a translation refers to in-language revisions and updating of a previously translated text. Modifications shall be billed by the hour, in accordance with the agreed upon turnaround time.

2.3 Formatting. For purposes of this Agreement, formatting is defined as the production of a foreign language translation so that the finished product resembles the English version. Formatting shall be billed by the hour, in accordance with the agreed upon turnaround time.

2.4 Field Testing. For purposes of this Agreement, field testing is defined as a structured process of sharing documents with potential end users and getting feedback on language, usability and user experience. This feedback is used to improve the documents.

2.5 Optional Services. Proposer may but is not required to include hourly fees for additional services they may offer. Information in this optional section will not impact the evaluation of proposals. The additional services are defined as follows:

- A.** Consultation - Providing review and consultation for outside translation performed by the JBE to ensure that the translation is competent. Consultation may be of the full document or to provide guidance to any in-house translator at the JBE regarding an approach to the translation or assistance with complicated language.
- B.** Voice Talent - People who speak the target language clearly and fluently. They may be used for audio recording of documents such as instruction sheets or website content.
- C.** Language Director - Person who directs the recording of an audio document into another language. They must understand the target language fluently and be able to identify any errors or points where the content should be rerecorded.
- D.** Recording Studio Fees -These fees are for recordings of any audio translations such as instructional materials or website in order to deliver a professional level of recording.
- E.** Community Review -This involves getting feedback from certified translators and others within a target language community about the most appropriate words to use or tone to take in a document or for web content directed to a specific community.
- F.** Plain Language Editing – This work involves reviewing an English source text and revising the text in accordance with principles of plain language or plain English.
- G.** Readability and Usability Review – This type of review involves feedback and revisions to the design and visual elements of a document and may also include a functional review of fillable form features.

3. Turnaround Times.

Prices are based on turnaround times as set forth below. Turnaround times for field testing and translation projects of more than 25,000 words to be negotiated. The agreed upon turnaround time shall be stated on the Participating Addendum.

Number of English Words	Target Language	Maximum turnaround times in days for translation, formatting and modifications		
		Regular (Non-Rush)	Rush	Urgent
<5,000	Spanish	7	5	2
	All Other Languages	12	10	7
5,001 - 10,000	Spanish	11	8	4
	All Other Languages	15	12	9
10,001 - 25,000	Spanish	15	12	7
	All Other Languages	20	15	12
> 25,000	Spanish	Negotiated	Negotiated	Negotiated
	All Other Languages	Negotiated	Negotiated	Negotiated
Field testing and other hourly services	All Languages	Negotiated	Negotiated	Negotiated

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

4.1 Per Word Pricing: Regular (Non-Rush).

	Regular (Non-Rush)			
	<5,000 words	5,001-10,000 words	10,001-25,000 words	>25,000 words
Per English Source Word Into:				
Arabic	\$	\$	\$	\$
Armenian (Eastern)	\$	\$	\$	\$
Armenian (Western)	\$	\$	\$	\$
Chinese Simplified	\$	\$	\$	\$
Chinese Traditional	\$	\$	\$	\$
Farsi	\$	\$	\$	\$
Hmong	\$	\$	\$	\$
Khmer	\$	\$	\$	\$
Korean	\$	\$	\$	\$
Punjabi	\$	\$	\$	\$
Russian	\$	\$	\$	\$
Spanish	\$	\$	\$	\$
Tagalog	\$	\$	\$	\$
Vietnamese	\$	\$	\$	\$

4.2 Per Word Pricing: Rush

Per English Source Word Into:	Rush			
	<5,000 words	5,001-10,000 words	10,001-25,000 words	>25,000 words
Arabic	\$	\$	\$	\$
Armenian (Eastern)	\$	\$	\$	\$
Armenian (Western)	\$	\$	\$	\$
Chinese Simplified	\$	\$	\$	\$
Chinese Traditional	\$	\$	\$	\$
Farsi	\$	\$	\$	\$
Hmong	\$	\$	\$	\$
Khmer	\$	\$	\$	\$
Korean	\$	\$	\$	\$
Punjabi	\$	\$	\$	\$
Russian	\$	\$	\$	\$
Spanish	\$	\$	\$	\$
Tagalog	\$	\$	\$	\$
Vietnamese	\$	\$	\$	\$

4.3 Per Word Pricing: Urgent

Per English Source Word Into:	Urgent			
	<5,000 words	5,001-10,000 words	10,001-25,000 words	>25,000 words
Arabic	\$	\$	\$	\$
Armenian (Eastern)	\$	\$	\$	\$
Armenian (Western)	\$	\$	\$	\$
Chinese Simplified	\$	\$	\$	\$
Chinese Traditional	\$	\$	\$	\$
Farsi	\$	\$	\$	\$
Hmong	\$	\$	\$	\$
Khmer	\$	\$	\$	\$
Korean	\$	\$	\$	\$
Punjabi	\$	\$	\$	\$
Russian	\$	\$	\$	\$
Spanish	\$	\$	\$	\$
Tagalog	\$	\$	\$	\$
Vietnamese	\$	\$	\$	\$

4.4 Per Hour Pricing

	Regular (Non-Rush)	Rush	Urgent
Hourly Rate for:			
Modifications	\$	\$	\$
Formatting	\$	\$	\$
Field Testing	\$		

4.5 Optional Services Pricing. Contractor may offer and the JBE may enter into a contract for the following services, which will be billed at the rates set forth below during the initial two-year contract term. Turnaround times for each of these services to be negotiated.

	Regular (Non-Rush)
Hourly Rate for:	
Consultation	\$
Voice Talent	\$
Language Director	\$
Recording Studio Fees	\$
Community Review	\$
Plain Language Editing	\$
Readability and Usability Review	\$
TBD	\$
TBD	\$

4.6 Minimum Fees. The parties agree to the minimum fees set forth below for the initial two-year contract term.

Translations from English to:	Regular (Non-Rush)	Rush	Urgent
Arabic	\$	\$	\$
Armenian (Eastern)	\$	\$	\$
Armenian (Western)	\$	\$	\$
Chinese Simplified	\$	\$	\$
Chinese Traditional	\$	\$	\$
Farsi	\$	\$	\$
Hmong	\$	\$	\$
Khmer	\$	\$	\$
Korean	\$	\$	\$
Punjabi	\$	\$	\$
Russian	\$	\$	\$
Spanish	\$	\$	\$
Tagalog	\$	\$	\$
Vietnamese	\$	\$	\$
Hourly Services:	Regular (Non-Rush)	Rush	Urgent
Modifications	\$	\$	\$
Formatting	\$	\$	\$
Field Testing	\$		
Consultation	\$		
Voice Talent	\$		
Language Director	\$		
Recording Studio Fees	\$		
Community Review	\$		
Plain Language Editing	\$		
Readability and Usability Review	\$		

5. Price Increases. During the initial two (2) year term, all prices shall remain fixed. In the event the Establishing JBE under its sole discretion exercises any Option Term under this Agreement, any price adjustment for that Option Term from the initial term prices may not exceed the lesser of: (i) the percentage change in the 12-month average of the Consumer Price Index (CPI), as further described below; or (ii) three (3) percent.

Bureau of Labor Statistics

http://data.bls.gov/timeseries/CUUR0000SA0?output_view=pct_12mths

Consumer Price Index – All Urban Consumers
12-Month Percent Change
Series ID: CUUR0000SA0
Not Seasonally Adjusted
Area: U.S. city average
Item: All items
Base Period: 1982-84=100

The rates applicable for each Option Term shall be set forth in a written Amendment to this Agreement.

6. Invoicing and Payment

- 6.1 Invoicing.** Contractor shall submit invoices to the Participating JBE in arrears no more frequently than monthly for Work that has been completed and accepted. All invoices will be sent to the address indicated by the JBE on the Participating Addendum. Each invoice must be printed on Contractor's standard printed bill form, and must include at a minimum (i) the Agreement number, (ii) Contractor's name and address, (iii) the nature of the invoiced charge, (iv) the total invoiced amount, and (v) such detail as is reasonably necessary to permit the JBE to evaluate the Work performed including without limitation, the number of hours worked and the hourly rate, if applicable. Contractor shall adhere to reasonable billing guidelines issued by the JBE from time to time. After receipt of invoice, the JBE will either approve the invoice for payment or give Contractor specific written reasons why part or all of the payment is being withheld and what remedial actions Contractor must take to receive the withheld amount
- 6.2 Payment.** The JBE will pay each correct, itemized invoice received from Contractor after acceptance of the applicable Services, or Deliverables, in accordance with the terms of this Agreement and the applicable Participating Addendum. Notwithstanding any provision to the contrary, payments to Contractor are contingent upon the timely and satisfactory performance of Contractor's obligations.
- 6.3 No Implied Acceptance.** Payment does not imply acceptance of Contractor's invoice, Services, or Deliverables. Contractor shall immediately refund any payment made in error. The JBE shall have the right at any time to set off any amount owing from Contractor to the JBE against any amount payable by the JBE to Contractor under this Agreement.
- 7. Taxes.** Unless otherwise required by law, the JBE is exempt from federal excise taxes and no payment will be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The JBE shall only pay for any applicable state or local sales, service, use, or similar taxes imposed on the Work rendered or equipment, parts or software supplied to the JBE pursuant to this Agreement.

APPENDIX C
GENERAL PROVISIONS

1. Provisions Applicable to Services

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

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

- 2.1 Authority.** Contractor has authority to enter into and perform its obligations under this Agreement and any Participating Addendum, and Contractor's signatory has authority to bind Contractor to this Agreement and any Participating Addendum.
- 2.2 Not an Expatriate Corporation.** Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC 10286.1, and is eligible to contract with the JBEs.
- 2.3 No Gratuities.** Contractor has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Judicial Branch Personnel with a view toward securing this Agreement (or any Participating Addendum) or securing favorable treatment with respect to any determinations concerning the performance of this Agreement (or any Participating Addendum).
- 2.4 No Conflict of Interest.** Contractor has no interest that would constitute a conflict of interest under PCC sections 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.

- 2.5 No Interference with Other Contracts.** To the best of Contractor's knowledge, this Agreement and any Participating Addendum does not create a material conflict of interest or default under any of Contractor's other contracts.
- 2.6 No Litigation.** No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect Contractor's ability to perform its obligations.
- 2.7 Compliance with Laws Generally.** Contractor complies with all laws, rules, and regulations applicable to Contractor's business and its obligations under this Agreement and any Participating Addendum.
- 2.8 Drug Free Workplace.** Contractor provides a drug free workplace as required by California Government Code sections 8355 through 8357.
- 2.9 No Harassment.** Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of this Agreement (and any Participating Addendum), and Contractor takes all reasonable steps to prevent harassment from occurring.
- 2.10 Noninfringement.** The Services, Deliverables, and Contractor's performance under this Agreement (and any Participating Addendum) do not infringe, or constitute an infringement, misappropriation or violation of, any Third Party's intellectual property right.
- 2.11 Nondiscrimination.** Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), and California's Fair Employment and Housing Act (Government Code sections 12900 et seq.) and associated regulations (Code of Regulations, title 2, sections 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor will notify in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor's obligations of nondiscrimination.
- 2.12 National Labor Relations Board Orders.** No more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.

3. Insurance

- 3.1 Basic Coverage.** Contractor shall provide to each JBE and maintain at the Contractor's expense the following insurance during the Term:
- A. Commercial General Liability.** The policy must be at least as broad as the Insurance Services Office (ISO) Commercial General Liability "occurrence" form, with coverage for liabilities arising out of premises, operations, independent contractors,

products and completed operations, personal and advertising injury, and liability assumed under an insured contract. The policy must provide limits of at least \$1,000,000 per occurrence and annual aggregate.

- B. *Workers Compensation and Employer's Liability.*** The policy is required only if Contractor has employees. The policy must include workers' compensation to meet minimum requirements of the California Labor Code, and it must provide coverage for employer's liability bodily injury at minimum limits of \$1,000,000 per accident or disease.
- C. *Automobile Liability.*** This policy is required only if Contractor uses an automobile or other vehicle in the performance of this Agreement. The policy must cover bodily injury and property damage liability and be applicable to all vehicles used in Contractor's performance of this Agreement whether owned, non-owned, leased, or hired. The policy must provide combined single limits of at least \$1,000,000 per occurrence.
- D. *Professional Liability.*** The policy must cover liability resulting from any act, error, or omission committed in Contractor's performance of Services under this Agreement, at minimum limits of \$1,000,000 per occurrence and annual aggregate. If the policy is written on a "claims made" form, Contractor shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the termination and acceptance of all Services provided under this Agreement. The retroactive date or "prior acts inclusion date" of any such "claims made" policy must be no later than the date that activities commence pursuant to this Agreement.

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

3.3 Aggregate Limits of Liability. The basic coverage limits of liability may be subject to annual aggregate limits. If this is the case, the annual aggregate limits of liability must be at least two (2) times the limits required for each policy, or the aggregate may equal the limits required but must apply separately to this Agreement.

3.4 Deductibles and Self-Insured Retentions. Contractor shall declare to each JBE all deductibles and self-insured retentions that exceed \$100,000 per occurrence. Any increases in deductibles or self-insured retentions that exceed \$100,000 per occurrence are subject to each JBE's approval. Deductibles and self-insured retentions do not limit Contractor's liability.

3.5 Additional Insured Endorsements. Contractor's commercial general liability policy, automobile liability policy, and, if applicable, umbrella policy must be endorsed to name the following as additional insureds with respect to liabilities arising out of the performance of this Agreement: the Establishing JBE, the State of California, the Participating Entities, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees.

- 3.6 Certificates of Insurance.** Before Contractor begins performing Services, Contractor shall give the Establishing JBE (and on request, any Participating Entity) certificates of insurance attesting to the existence of coverage. Contractor shall provide prompt written notice in the event that insurance coverage is cancelled or materially changed from the coverage set forth in the current certificate of insurance.
- 3.7 Qualifying Insurers.** For insurance to satisfy the requirements of this section, all required insurance must be issued by an insurer with an A.M. Best rating of A- or better that is approved to do business in the State of California.
- 3.8 Required Policy Provisions.** Each policy must provide, as follows: (i) the policy is primary and noncontributory with any insurance or self-insurance maintained by Judicial Branch Entities and Judicial Branch Personnel, and the basic coverage insurer waives any and all rights of subrogation against Judicial Branch Entities and Judicial Branch Personnel; (ii) the insurance applies separately to each insured against whom a claim is made or a lawsuit is brought, to the limits of the insurer's liability; and (iii) each insurer waives any right of recovery or subrogation it may have against the Establishing JBE, any Participating Entity, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees for loss or damage.
- 3.9 Partnerships.** If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either (i) separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or (ii) joint insurance program with the association, partnership, or other joint business venture included as a named insured.
- 3.10 Consequence of Lapse.** If required insurance lapses during the Term, the JBEs are not required to process invoices after such lapse until Contractor provides evidence of reinstatement that is effective as of the lapse date.
- 4. Indemnity.** Contractor will defend (with counsel satisfactory to the JBE or its designee), indemnify and hold harmless the Judicial Branch Entities and the Judicial Branch Personnel against all claims, losses, and expenses, including attorneys' fees and costs, that arise out of or in connection with: (i) an act or omission of Contractor, its agents, employees, independent contractors, or subcontractors in the performance of this Agreement; (ii) a breach of a representation, warranty, or other provision of this Agreement or any Participating Addendum; and (iii) infringement of any trade secret, patent, copyright or other Third Party intellectual property. This indemnity applies regardless of the theory of liability on which a claim is made or a loss occurs. This indemnity will survive the expiration or termination of this Agreement or any Participating Addendum, and acceptance of any Services or Deliverables. Contractor shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement that would bind an indemnified party, without the affected JBE's prior written consent, which consent shall not be unreasonably withheld; and such JBE shall have the right, at its option and expense, to participate in the defense and/or settlement of a claim through counsel of its own choosing. Contractor's duties of indemnification exclude indemnifying a party for that portion of losses and expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party.

5. **Option Term.** The Establishing JBE may, at its sole option, extend this Agreement for up to **three (3)** consecutive one-year terms, at the end of which Option Terms this Agreement shall expire. In order to exercise the Option Term(s), the Establishing JBE must send Notice to Contractor at least thirty (30) days prior to the end of the Term. The exercise of an Option Term will be effective without Contractor's signature.
6. **Tax Delinquency.** Contractor must provide notice to the JBEs immediately if Contractor has reason to believe it may be placed on either (i) the California Franchise Tax Board's list of 500 largest state income tax delinquencies, or (ii) the California Board of Equalization's list of 500 largest delinquent sales and use tax accounts. The Establishing JBE may terminate this Agreement immediately "for cause" pursuant to section 7.2 below (and each JBE may terminate its Participating Addendum immediately "for cause" pursuant to section 7.2 below) if (i) Contractor fails to provide the notice required above, or (ii) Contractor is included on either list mentioned above.

7. Termination

- 7.1 **Termination for Convenience.** The Establishing JBE may terminate, in whole or in part, this Agreement (and a JBE may terminate, in whole or in part, a Participating Addendum) for convenience upon providing the Contractor written Notice at least ten (10) days before the effective date of termination. Upon receipt of a termination Notice, the Contractor shall promptly discontinue all Work affected unless the Notice specifies otherwise.
- 7.2 **Termination for Cause.** The Establishing JBE may terminate this Agreement, in whole or in part, immediately "for cause" (and a JBE may terminate a Participating Addendum, in whole or in part, immediately "for cause"), if: (i) Contractor fails or is unable to meet or perform any of its duties under this Agreement or a Participating Addendum, and this failure is not cured within 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.
- 7.3 **Termination upon Death.** This entire Agreement will terminate immediately without further action of the parties upon the death of a natural person who is a party to this Agreement, or a general partner of a partnership that is a party to this Agreement.
- 7.4 **Termination for Changes in Budget or Law.** Each 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 a 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.

7.5 Rights and Remedies.

- A. *Nonexclusive Remedies.*** All remedies provided in this Agreement may be exercised individually or in combination with any other available remedy. Contractor shall notify the Establishing JBE and the affected Participating Entities immediately if Contractor is in default, or if a Third Party claim or dispute is brought or threatened that alleges facts that would constitute a default under this Agreement (or a Participating Addendum). If Contractor is in default: (i) a JBE may withhold all or any portion of a payment otherwise due to Contractor, and exercise any other rights of setoff as may be provided in this Agreement; (ii) a JBE may require Contractor to enter into nonbinding mediation; (iii) the Establishing JBE may exercise, following Notice, the Establishing JBE's right of early termination of this Agreement (and a JBE may exercise its right of early termination of a Participating Addendum) as provided herein; and (iv) a JBE may seek any other remedy available at law or in equity.
- B. *Replacement.*** If the Establishing JBE terminates this Agreement (or if a JBE terminates a Participating Addendum) in whole or in part for cause, the JBE may acquire from third parties, under the terms and in the manner the JBE considers appropriate services equivalent to those terminated, and Contractor shall be liable to the JBE for any excess costs for those services. Notwithstanding any other provision, in no event shall the excess cost to the JBEs for such services be excluded as indirect, incidental, special, exemplary, punitive or consequential damages of the JBEs. Contractor shall continue any Work not terminated.
- C. *Delivery of Materials.*** In the event of any expiration or termination of this Agreement (or a Participating Addendum), Contractor shall promptly provide the applicable JBE or JBEs with all originals and copies of the Deliverables for such JBE, including any partially-completed Deliverables-related work product or Materials, and any JBE-provided Materials in its possession, custody, or control. In the event of any termination of this Agreement or Participating Addendum, the JBEs shall not be liable to Contractor for compensation or damages incurred as a result of such termination.
- D. *Participating Addendum.*** The termination of this Agreement shall not result in the termination of any outstanding Participating Addendum that has not been terminated by a JBE, and this Agreement shall continue to apply to any such Participating Addendum until such time as all Work under such Participating Addendum has been completed by its terms or is terminated as provided in this section 7; provided, however, that the term of such Participating Addendum may not exceed the Expiration Date of this Agreement. Issuance and acknowledgement of any Participating Addendum must be completed before the termination of this Agreement.

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

8. Assignment and Subcontracting.

8.1 Except as stated in subsection 8.2 below, Contractor may not assign or subcontract its rights or duties under this Agreement (including any Participating Addendum), in whole or in part, whether by operation of law or otherwise, without the prior written consent of the Establishing JBE. Consent may be withheld for any reason or no reason. Any assignment or subcontract made in contravention of the foregoing shall be void and of no effect. Subject to the foregoing, this Agreement will be binding on the parties and their permitted successors and assigns.

8.2 The Establishing JBE hereby gives its consent to Contractor to subcontract specific Work to the following subcontractors:

Arabic	
Armenian (Eastern)	
Armenian (Western)	
Chinese Simplified	
Chinese Traditional	
Farsi	
Hmong	
Khmer	
Korean	
Punjabi	
Russian	
Spanish	
Tagalog	
Vietnamese	

8.3 The Work provided by the above-named subcontractors shall be limited to the specific languages identified above. All other Work shall be performed by Contractor.

8.4 If the Establishing JBE rejects any proposed subcontractor, 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. The Establishing JBE's consent to any subcontracting 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 JBEs for performing the duties in this Agreement; (ii) affirm the rights granted in this Agreement to the JBEs; (iii) make the representations and warranties made by the Contractor in this Agreement; and (iv) shall comply with and be subject to the terms of this Agreement.

9. Contractor’s Key Personnel.

Contractor’s Key Personnel are listed below:

TBD

10. Contractor’s Personnel and Replacement Personnel.

- A. The Judicial Council reserves the right to disapprove the continuing assignment of any of Contractor's personnel provided to the Judicial Council under this Agreement if, in the Judicial Council's opinion, the performance of Contractor’s personnel is unsatisfactory. The Judicial Council agrees to provide Notice to Contractor in the event it makes such a determination. If the Judicial Council exercises this right, Contractor shall immediately assign replacement personnel or subcontractors possessing equivalent or greater experience and skills.
- B. If any of Contractor's Key Personnel identified in section 9 above becomes unavailable during the Term of this Agreement, Contractor shall immediately assign replacement personnel with equivalent or greater experience and skills that are acceptable to the Judicial Council’s Project Manager.
- C. If Contractor's Key Personnel becomes unavailable or is disapproved and Contractor cannot furnish a replacement acceptable to the Judicial Council’s Project Manager, the Judicial Council may terminate this Agreement for cause pursuant to Appendix C, section 7.2.

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

If to the Establishing JBE:	If to Contractor:
Bonnie Hough Branch Accounting & Procurement 455 Golden Gate Avenue, 6 th Floor San Francisco, CA 94102-3688 <u>With a copy to:</u> Supervisor, Contracts 2850 Gateway Oaks Drive, Suite 300 Sacramento, CA 95833-4348	

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 courier service.

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

12.1 Union Activities Restrictions. *If the Contract Amount is over \$50,000, this section is applicable.* Contractor agrees that no JBE funds received under this Agreement or any Participating Addendum will be used to assist, promote or deter union organizing during the Term. If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no JBE funds were used for those expenditures. Contractor will provide those records to the Attorney General upon request.

12.2 Domestic Partners, Spouses, Gender, and Gender Identity Discrimination. *If the Contract Amount is \$100,000 or more, this section is applicable.* Contractor is in compliance with, and throughout the Term will remain in compliance with: (i) PCC 10295.3, which places limitations on contracts with contractors who discriminate in the provision of benefits on the basis of marital or domestic partner status; and (ii) PCC 10295.35, which places limitations on contracts with contractors that discriminate in the provision of benefits on the basis of an employee's or dependent's actual or perceived gender identity.

12.3 Child Support Compliance Act. *If the Contract Amount is \$100,000 or more, this section is applicable.* Contractor recognizes the importance of child and family support obligations and fully complies with (and will continue to comply with during the Term) all applicable state and federal laws relating to child and family support enforcement, including disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq. Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

12.4 Priority Hiring. *If the Contract Amount is over \$200,000 and this Agreement is for services (other than Consulting Services), this section is applicable.* Contractor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with PCC 10353.

12.5 Iran Contracting Act. *If the Contract Amount is \$1,000,000 or more and Contractor did not provide to the Establishing JBE an Iran Contracting Act certification as part of the solicitation process, this section is applicable.* Contractor certifies either (i) it is not on the current list of persons engaged in investment activities in Iran ("Iran List") created by the California Department of General Services pursuant to PCC 2203(b), and is not a financial institution extending \$20,000,000 or more in credit to another person, for forty-

five (45) days or more, if that other person will use the credit to provide services in the energy sector in Iran and is identified on the Iran List, or (ii) it has received written permission from the Establishing JBE to enter into this Agreement (and written permission from each JBE to enter into the applicable Participating Addendum) pursuant to PCC 2203(c).

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

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

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

12.9 DVBE Commitment This section is applicable if Contractor received a disabled veteran business enterprise (“DVBE”) incentive in connection with this Agreement. Contractor’s failure to meet the DVBE commitment set forth in its bid or proposal constitutes a breach of the Agreement. If Contractor used DVBE subcontractor(s) in connection with this Agreement (or a Participating Addendum): (i) Contractor must use the DVBE subcontractors identified in its bid or proposal, unless the Establishing JBE approves in writing replacement by another DVBE subcontractor in accordance with the terms of this Agreement; and (ii) Contractor must, within sixty (60) days of receiving final payment under each Participating Addendum, certify in a report to the applicable JBE: (1) the total amount of money Contractor received under the Participating Addendum; (2) the name and address of each DVBE subcontractor to which Contractor subcontracted work in connection with the Participating Addendum; (3) the amount each DVBE subcontractor received from Contractor in connection with the Participating Addendum; and (4) that all payments under the Participating Addendum have been made to the applicable DVBE subcontractors. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

13. Miscellaneous Provisions.

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

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

13.3 Audit. Contractor must allow the JBEs or their designees to review and audit Contractor’s (and any subcontractors’) documents and records relating to this Agreement (including any Participating Addendum), and Contractor (and its subcontractors) shall retain such documents and records for a period of four (4) years following final payment under this Agreement. If an audit determines that Contractor (or any subcontractor) is not in compliance with this Agreement (including any Participating Addendum), Contractor shall correct errors and deficiencies by the twentieth (20th) day of the month following the review or audit. If an audit determines that Contractor has overcharged the JBE five percent (5%) or more during the time period subject to audit, Contractor must reimburse the JBE for the cost of such audit, in addition to any other remedies the JBE may have. This Agreement (and any Participating Addendums) are subject to examinations and audit by the State Auditor for a period of three (3) years after final payment.

- 13.4 Licenses and Permits.** Contractor shall obtain and keep current all necessary licenses, approvals, permits and authorizations required by applicable law for the performance of the Services (including Deliverables). 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.
- 13.5 Confidential Information.** During the Term and at all times thereafter, Contractor will: (a) hold all Confidential Information in strict trust and confidence, (b) refrain from using or permitting others to use Confidential Information in any manner or for any purpose not expressly permitted by this Agreement, (c) refrain from disclosing or permitting others to disclose any Confidential Information to any Third Party without obtaining the JBE's express prior written consent on a case-by-case basis, and (d) refrain from disclosing information that the receiving party rightfully obtains from a Third Party free of the obligation of confidentiality to the disclosing party. Contractor will disclose Confidential Information only to its employees or contractors who need to know that information in order to perform Services hereunder and who have executed a confidentiality agreement with Contractor at least as protective as the provisions of this section. The provisions of this section shall survive the expiration or termination of this Agreement and any Participating Addendum. Contractor will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Contractor protects its own confidential or proprietary information of a similar nature, and with no less than the greater of reasonable care and industry-standard care. Each JBE owns all right, title and interest in its Confidential Information. Contractor will notify the affected JBE promptly upon learning of any unauthorized disclosure or use of Confidential Information and will cooperate fully with the JBE to protect such Confidential Information. Upon a JBE's request and upon any termination or expiration of this Agreement or a Participating Addendum, Contractor will promptly (a) return to the JBE or, if so directed by the JBE, destroy all such JBE's Confidential Information (in every form and medium), and (b) certify to the JBE in writing that Contractor has fully complied with the foregoing obligations. Contractor acknowledges that there can be no adequate remedy at law for any breach of Contractor's obligations under this section, that any such breach will likely result in irreparable harm, and that upon any breach or threatened breach of the confidentiality obligations, the JBEs shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.
- 13.6 Ownership of Deliverables.** Unless otherwise agreed in this Agreement, regarding any Deliverables or any other work product to be provided to a JBE, Contractor hereby assigns to such JBE all rights, title, and interest (and all intellectual property rights, including but not limited to copyrights) in and to such Deliverables and work product, any partially-completed Deliverables, and related Materials. Contractor agrees not to assert any rights at common law, or in equity, or establish a copyright claim in any of these Materials. Contractor shall not publish or reproduce any Deliverable or other work product in whole or part, in any manner or form, or authorize others to do so, without the written consent of the JBE.
- 13.7 Publicity.** Contractor shall not make any public announcement or press release about this Agreement (or any Participating Addendum) without the prior written approval of

- the Establishing JBE (and with respect to any Participating Addendum, the prior written approval of the applicable JBE).
- 13.8 Choice of Law and Jurisdiction.** California law, without regard to its choice-of-law provisions, governs this Agreement (including any Participating Addendum). The Contractor and the applicable JBEs shall attempt in good faith to resolve informally and promptly any dispute that arises. Jurisdiction for any legal action arising from this Agreement shall exclusively reside in state or federal courts located in California, and the parties hereby consent to the jurisdiction of such courts.
- 13.9 Negotiated Agreement.** This Agreement has been arrived at through negotiation between the parties. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code section 1654.
- 13.10 Amendment and Waiver.** “**Amendment**” means a written document issued by the Judicial Council and signed by the Contractor which alters the Agreement and identifies a change in Work or an adjustment to the Agreement terms. Except as otherwise specified in this Agreement, no Amendment or change to this Agreement will be effective unless expressly agreed in writing by a duly authorized officer of the Establishing JBE. A waiver of enforcement of any of this Agreement’s terms or conditions by the Establishing JBE is effective only if expressly agreed in writing by a duly authorized officer of the Establishing JBE. Any waiver or failure by a JBE to enforce any provision of this Agreement or Participating Addendum on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
- 13.11 Follow-On Contracting.** No person, firm, or subsidiary who has been awarded a Consulting Services agreement may submit a bid for, nor be awarded an agreement for, the providing of services, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of this Agreement.
- 13.12 Severability.** If any part of this Agreement is held unenforceable, all other parts remain enforceable.
- 13.13 Headings; Interpretation.** All headings are for reference purposes only and do not affect the interpretation of this Agreement. The word “including” means “including, without limitation.” Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days.
- 13.14 Time of the Essence.** Time is of the essence in Contractor’s performance under this Agreement.
- 13.15 Counterparts.** This Agreement may be executed in counterparts, each of which is considered an original.

APPENDIX D DEFINED TERMS

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

“Agreement” is defined on the Coversheet.

“Amendment” is defined in Appendix C, section 13.10.

“Contractor” is defined on the Coversheet.

“Confidential Information” means: (i) any information related to the business or operations of each JBE, including information relating to its personnel and users; and (ii) all financial, statistical, personal, technical and other data and information of each JBE (and proprietary information of third parties provided to Contractor) which is designated confidential or proprietary, or that Contractor otherwise knows, or would reasonably be expected to know, is confidential. Confidential Information does not include information that Contractor demonstrates to the JBEs’ satisfaction that: (a) Contractor lawfully knew prior to the JBE’s first disclosure to Contractor, (b) a Third Party rightfully disclosed to Contractor free of any confidentiality duties or obligations, or (c) is, or through no fault of Contractor has become, generally available to the public, and (d) information that is independently developed by the receiving party without reference to the Confidential Information.

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

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

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

“Deliverables” is described in Appendix A.

“Effective Date” is defined on the Coversheet.

“Establishing JBE” is defined on the Coversheet.

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

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

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

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

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

“Material” means all types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, information and telecommunication technology, documents, reports, audio recordings, instructional media, deliverables-related work product and any JBE-provided Materials.

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

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

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

“PCC” refers to the California Public Contract Code.

“Plain Language English” is a style of communication that uses easy to understand, familiar phrasing with an emphasis on clarity, brevity, and avoidance of overly complex vocabulary. In the legal context, it is text that is clear, concise, correct and appropriate for the intended audience.

“Purchase Order” is defined as an ordering document that may be used by a JBE to place an order for Work under this Agreement after a Participating Addendum has been entered into between the JBE and the Contractor.

“Services” is defined in Appendix A.

“Stop Work Order” is defined in Appendix B.

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

“Third Party” means any individual, association, partnership, firm, company, corporation, consultant, Subcontractor, or combination thereof, including joint ventures, other than the Judicial Council or the Contractor, which is not a party to this Agreement.

“Work” is defined in Appendix A.

APPENDIX E

Participating Addendum

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

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

[TO BE COMPLETED]

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

If to Contractor:	If to the JBE:
<u>[name, title, address]</u>	<u>[name, title, address]</u>
<u>With a copy to:</u>	<u>With a copy to:</u>
	Supervisor, Contracts 2850 Gateway Oaks Drive, Suite 300 Sacramento, CA 95833-4348

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.

[also designate Project Managers, per Appendix A, Section 7 of the Agreement]

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

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

[JBE]

[CONTRACTOR]

By: _____

By: _____

Name:

Name:

Title:

Title:

APPENDIX F

**UNRUH CIVIL RIGHTS ACT AND
CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT CERTIFICATION**

Pursuant to Public Contract Code (PCC) section 2010, the following certifications must be provided when (i) submitting a bid or proposal to the JBE for a solicitation of goods or services of \$100,000 or more, or (ii) entering into or renewing a contract with the JBE for the purchase of goods or services of \$100,000 or more.

CERTIFICATIONS:

1. Contractor is in compliance with the Unruh Civil Rights Act (Section 51 of the Civil Code);
2. Contractor is in compliance with the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of the Title 2 of the Government Code);
3. Contractor does not have any policy against any sovereign nation or peoples recognized by the government of the United States, including, but not limited to, the nation and people of Israel, that is used to discriminate in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code); **and**
4. Any policy adopted by a person or actions taken thereunder that are reasonably necessary to comply with federal or state sanctions or laws affecting sovereign nations or their nationals shall not be construed as unlawful discrimination in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code).

The certifications made in this document are made under penalty of perjury under the laws of the State of California. I, the official named below, certify that I am duly authorized to legally bind the Contractor to the certifications made in this document. The certifications made in this document shall be deemed to be made for, and apply to, the Agreement and each Participating Addendum of \$100,000 or more.

<i>Contractor Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of _____ in the State of _____</i>	