

ATTACHMENT 2 STANDARD PROVISIONS

EXHIBIT A Services

1. Background and Purpose.

1.1 **Judicial Council of California.** The Judicial Council of California (JUDICIAL COUNCIL), chaired by the Chief Justice of California, is the chief policy making agency of the California judicial system. The California Constitution directs the council to improve the administration of justice by surveying judicial business, recommending improvements to the courts, and making recommendations annually to the Governor and the Legislature. The JUDICIAL COUNCIL also adopts rules for court administration, practice, and procedure, and performs other functions prescribed by law.

1.2 **The Information Technology Services Office.** The Information Technology Services Office is housed in the JUDICIAL COUNCIL's Judicial and Court Administrative Services Division and is responsible for assisting the courts in achieving the JUDICIAL COUNCIL's technology objectives. The office is directly responsible for the development, acquisition, implementation, and support of automated systems in the appellate courts and the JUDICIAL COUNCIL.

2. Services.

2.1 **Description of Services.** Contractor shall perform the following services ("Services"): Please refer to Exhibit E.

2.2 **Acceptance Criteria.** The Services and Deliveries must meet the following acceptance criteria on Exhibit E or the JUDICIAL COUNCIL may reject the applicable Services or Deliveries. The JUDICIAL COUNCIL may use the attached Acceptance and Signoff Form to notify Contractor of the acceptance or rejection of the Services and Deliveries. Contractor will not be paid for any rejected Services or Deliveries.

2.3 **Timeline.** Contractor must perform the Services and deliver the Deliveries according to the following timeline as provided in Exhibit E.

2.4 **Term.** The services are expected to be performed by the selected service provider between April 1, 2017 and March 31, 2018 ("Initial Term") with four (4) possible consecutive one-year option terms, to extend the Agreement under the same terms and conditions in effect for the Initial Term. The consecutive one-year options shall be exercised at the sole discretion of the JUDICIAL

COUNCIL. If the JUDICIAL COUNCIL elects to extend the Agreement, the Proposer may negotiate price adjustments applicable during the option period(s) and any agreed-upon price adjustments will be set forth in a written amendment to the Agreement. Any agreed-upon price adjustment (whether an increase or decrease in price) may not exceed during any one-year option period the previous 12 months' change in the San Francisco Region Consumer Price Index as published by the U.S. Bureau of Labor Statistics at <http://www.bls.gov/ro9/cpisanf.htm>.

2.5 Work Managers. The JUDICIAL COUNCIL's Work manager is: TBD. The JUDICIAL COUNCIL may change its Work manager at any time upon notice to Contractor without need for an amendment to this Agreement. Contractor's Work manager is: TBD. Subject to written approval by the JUDICIAL COUNCIL, Contractor may change its Work manager without need for an amendment to this Agreement.

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

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

2.8 Commencement of Performance. This Agreement is of no force and effect until signed by both parties and all JUDICIAL COUNCIL-required approvals are secured. Any commencement of performance prior to Agreement approval shall be at Contractor's own risk.

2.9 Stop Work Orders.

A. The JUDICIAL COUNCIL may, at any time, by Notice to Contractor, require Contractor to stop all or any part of the Services for a period up to ninety (90) days after the Notice is delivered to Contractor, and for any further period to which the parties 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 Services

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 JUDICIAL COUNCIL shall either (i) cancel the Stop Work Order; or (ii) terminate the Services covered by the Stop Work Order as provided for in this Agreement.

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

- i. The Stop Work Order results in an increase in the time required for, or in Contractor's cost properly allocable to the performance of any part of this Agreement; and
- ii. Contractor requests an equitable adjustment within thirty (30) days after the end of the period of stoppage; however, if the JUDICIAL COUNCIL decides the facts justify the action, the JUDICIAL COUNCIL may receive and act upon a proposal submitted at any time before final payment under this Agreement.

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

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

**APPENDIX 1
ACCEPTANCE AND SIGNOFF FORM**

Description of Services or Deliveries provided by Contractor:

Date submitted to the JUDICIAL COUNCIL: _____

The Services or Deliveries 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 Deliveries.

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

Please note level of satisfaction:

Poor Fair Good Very Good Excellent

Comments, if any:

The Services or Deliveries listed above are accepted.

The Services or Deliveries listed above are rejected.

Name: _____

Title: _____

Date: _____

END OF ATTACHMENT

EXHIBIT B

Payment Provisions

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

2. **Compensation for Services.**

2.1 **Amount.** Contractor will invoice the following amounts listed on Exhibit F for Services or Deliveries that the JUDICIAL COUNCIL has accepted:

2.3 **No Advance Payment.** The JUDICIAL COUNCIL will not make any advance payment for Services.

3. **Expenses.** Except as set forth in this section, no expenses relating to the Services, and Deliveries shall be reimbursed by the JUDICIAL COUNCIL.

3.1 **Required Certification.** If Contractor incurs costs or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from the JUDICIAL COUNCIL was sought for these costs, and Contractor will provide those records to the Attorney General upon request.

4. **Invoicing and Payment**

4.1 **Invoicing.** Contractor shall submit invoices to the JUDICIAL COUNCIL in arrears no more frequently than monthly. Contractor's invoices must include information and supporting documentation acceptable to the JUDICIAL COUNCIL. Contractor shall adhere to reasonable billing guidelines issued by the JUDICIAL COUNCIL from time to time.

4.2 **Payment.** The JUDICIAL COUNCIL will pay each correct, itemized invoice received from Contractor after acceptance of the applicable Services, or Deliveries, in accordance with the terms of this Agreement.

Notwithstanding any provision in this Agreement to the contrary, payments to Contractor are contingent upon the timely and satisfactory performance of Contractor's obligations under this Agreement.

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

5. **Taxes.** Unless otherwise required by law, the JUDICIAL COUNCIL 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 JUDICIAL COUNCIL shall only pay for any state or local sales, service, use, or similar taxes imposed on the Services rendered or equipment, parts or software supplied to the JUDICIAL COUNCIL pursuant to this Agreement.

EXHIBIT C

General Provisions

1. Provisions Applicable to Services

1.1 **Qualifications.** Contractor shall assign to this Work only persons who have sufficient training, education, and experience to successfully perform Contractor's duties. If the JUDICIAL COUNCIL is dissatisfied with any of Contractor's personnel, for any or no reason, Contractor shall replace them with qualified personnel.

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 JUDICIAL COUNCIL if the JUDICIAL COUNCIL wishes to perform any background checks on Contractor's personnel by obtaining, at no additional cost, all releases, waivers, and permissions the JUDICIAL COUNCIL may require. Contractor shall not assign personnel who refuse to undergo a background check. Contractor shall provide prompt notice to the JUDICIAL COUNCIL of (i) any person who refuses to undergo a background check, and (ii) the results of any background check requested by the JUDICIAL COUNCIL and performed by Contractor. Contractor shall ensure that the following persons are not assigned to perform services for the JUDICIAL COUNCIL: (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 JUDICIAL COUNCIL, the JUDICIAL COUNCIL advises are unacceptable to the JUDICIAL COUNCIL.

2. **Contractor Certification Clauses.** Contractor certifies that the following representations and warranties are true. Contractor shall cause its representations and warranties to remain true during the Term. Contractor shall promptly notify the JUDICIAL COUNCIL 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 Contractor's signatory has authority to bind Contractor to this Agreement.

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 JUDICIAL COUNCIL.

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 securing favorable treatment with respect to any determinations concerning the performance of this Agreement.

2.4 **No Conflict of Interest.** Contractor has no interest that would constitute a conflict of interest under PCC 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 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 the Services.

2.7 **Compliance with Laws Generally.** Contractor complies in all material respects with all laws, rules, and regulations applicable to Contractor's business and services.

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 Contractor takes all reasonable steps to prevent harassment from occurring.

2.10 **Noninfringement.** The Services, Deliveries, and Contractor's performance under this Agreement do not infringe, or constitute an infringement, misappropriation or violation of, any third party's intellectual property right.

2.11 **Nondiscrimination.** Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California's Fair Employment and Housing Act (Government Code sections 12990 et seq.) and associated regulations (Code of Regulations, title 2, sections 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor will notify in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor's obligations of nondiscrimination.

2.12 **National Labor Relations Board Orders.** No more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.

3. **Insurance**

3.1 **Basic Coverage.** Contractor shall provide and maintain at the JUDICIAL COUNCIL's discretion and 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.

E. **Commercial Crime Insurance.** This policy is required only if Contractor handles or has regular access to the JUDICIAL COUNCIL's funds or property of significant value to the JUDICIAL COUNCIL. This policy must cover dishonest acts including loss due to theft of money, securities, and property; forgery, and alteration of documents; and fraudulent transfer of money, securities, and property. The minimum liability limit must be \$1,000,000.00.

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 the JUDICIAL COUNCIL 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 the JUDICIAL COUNCIL'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 JUDICIAL COUNCIL, the State of California, the Judicial Council of California, 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 JUDICIAL COUNCIL 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 JUDICIAL COUNCIL.

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 JUDICIAL COUNCIL, the State of California, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees for loss or damage.

3.9 Partnerships. If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either (i) separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or (ii) joint insurance program with the association, partnership, or other joint business venture included as a named insured.

3.10 **Consequence of Lapse.** If required insurance lapses during the Term, the JUDICIAL COUNCIL is 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 JUDICIAL COUNCIL 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, 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, and acceptance of any Services, or Deliveries. Contractor shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement which would bind an indemnified party, without the JUDICIAL COUNCIL's prior written consent, which consent shall not be unreasonably withheld; and the JUDICIAL COUNCIL 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. **Tax Delinquency.** Contractor must provide notice to the JUDICIAL COUNCIL 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 JUDICIAL COUNCIL may terminate this Agreement 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.

6. **Termination**

6.1 **Termination for Convenience.** The JUDICIAL COUNCIL may terminate, in whole or in part, this Agreement for convenience upon thirty (30) days prior Notice. After receipt of such Notice, and except as otherwise directed by the JUDICIAL COUNCIL, Contractor shall immediately stop Services as specified in the Notice.

6.2 **Termination for Cause.** The JUDICIAL COUNCIL may terminate this Agreement, 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, and this failure is not cured within ten (10) days following Notice of default (or in the opinion of the JUDICIAL COUNCIL, 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 any representation, warranty, or certification that is or was incorrect, inaccurate, or misleading.

6.3 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.

6.4 Termination for Changes in Budget or Law. The JUDICIAL COUNCIL's payment obligations under this Agreement 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. Funding beyond the current appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement. The JUDICIAL COUNCIL may terminate this Agreement or limit Contractor's Services (and reduce proportionately Contractor's fees) upon Notice to Contractor without prejudice to any right or remedy of the JUDICIAL COUNCIL if: (i) expected or actual funding to compensate Contractor is withdrawn, reduced or limited; or (ii) the JUDICIAL COUNCIL determines that Contractor's performance under this Agreement has become infeasible due to changes in applicable laws.

6.5 Rights and Remedies of the JUDICIAL COUNCIL.

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 JUDICIAL COUNCIL immediately if Contractor is in default, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a default under this Agreement. If Contractor is in default, the JUDICIAL COUNCIL may do any of the following: (i) withhold all or any portion of a payment otherwise due to Contractor, and exercise any other rights of setoff as may be provided in this Agreement or any other agreement between a Judicial Branch Entity and Contractor; (ii) require Contractor to enter into nonbinding mediation; (iii) exercise, following Notice, the JUDICIAL COUNCIL's right of early termination of this Agreement as provided herein; and (iv) seek any other remedy available at law or in equity.

B. Replacement. If the JUDICIAL COUNCIL terminates this Agreement in whole or in part for cause, the JUDICIAL COUNCIL may acquire from third parties, under the terms and in the manner the JUDICIAL COUNCIL considers appropriate, services equivalent to those terminated, and Contractor shall be liable to the JUDICIAL COUNCIL for any excess costs for those services. Notwithstanding any other provision of this Agreement, in no event shall the excess cost to the JUDICIAL COUNCIL for such services be excluded under this Agreement as indirect, incidental,

special, exemplary, punitive or consequential damages of the JUDICIAL COUNCIL. Contractor shall continue any Services not terminated hereunder.

C. **Delivery of Materials.** In the event of any expiration or termination of this Agreement, Contractor shall promptly provide the JUDICIAL COUNCIL with all originals and copies of the Deliveries, including any partially-completed Deliveries-related materials, and any JUDICIAL COUNCIL-provided materials in its possession, custody, or control. In the event of any termination of this Agreement, the JUDICIAL COUNCIL shall not be liable to Contractor for compensation or damages incurred as a result of such termination; provided that if the JUDICIAL COUNCIL's termination is not for cause, the JUDICIAL COUNCIL shall pay any fees due under this Agreement for Services performed or Deliveries completed and accepted as of the date of the JUDICIAL COUNCIL's termination Notice.

6.6 **Survival.** Termination or expiration of this Agreement shall not affect the rights and obligations of the parties 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 which 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.

7. **Assignment and Subcontracting.** Contractor may not assign or subcontract its rights or duties under this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the JUDICIAL COUNCIL. 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. **Notices.** Notices must be sent to the following address and recipient:

If to Contractor: **TBD**
[Name, title, address]
With a copy to:

If to the JUDICIAL COUNCIL:
[Name, title, address] **TBD**
With a copy to:

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

9. **Union Activities Restrictions.** If the Contract Amount is over \$50,000, this section is applicable. Contractor agrees that no JUDICIAL COUNCIL 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 JUDICIAL COUNCIL funds were used for those expenditures. Contractor will provide those records to the Attorney General upon request.

10. **Antitrust Claims.** If this Agreement resulted from a competitive solicitation, this section is applicable. Contractor shall assign to the JUDICIAL COUNCIL 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 JUDICIAL COUNCIL. Such assignment shall be made and become effective at the time the JUDICIAL COUNCIL tenders final payment to Contractor. If the JUDICIAL COUNCIL 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 JUDICIAL COUNCIL any portion of the recovery, including treble damages, attributable to overcharges that were paid by Contractor but were not paid by the JUDICIAL COUNCIL as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Upon demand in writing by Contractor, the JUDICIAL COUNCIL 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 JUDICIAL COUNCIL has not been injured thereby, or (b) the JUDICIAL COUNCIL declines to file a court action for the cause of action.

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

11. **Miscellaneous Provisions.**

11.1 **Independent Contractor.** Contractor is an independent contractor to the JUDICIAL COUNCIL. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor and the JUDICIAL COUNCIL. Contractor has no authority to bind or incur any obligation on behalf of the JUDICIAL COUNCIL. If any governmental entity concludes that Contractor is not an independent contractor, the JUDICIAL COUNCIL may terminate this Agreement immediately upon Notice.

11.2 **GAAP Compliance.** Contractor maintains an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles.

11.3 **Audit.** Contractor must allow the JUDICIAL COUNCIL or its designees to review and audit Contractor's (and any subcontractors') documents and records relating to this Agreement, 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, 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 JUDICIAL COUNCIL five percent (5%) or more during the time period subject to audit, Contractor must reimburse the JUDICIAL COUNCIL in an amount equal to the cost of such audit. This Agreement is subject to examinations and audit by the State Auditor for a period three (3) years after final payment.

11.4 **Licenses and Permits.** Contractor shall obtain and keep current all necessary licenses, approvals, permits and authorizations required by applicable law for the performance of the Services. Contractor will be responsible for all fees and taxes associated with obtaining such licenses, approvals, permits and authorizations, and for any fines and penalties arising from its noncompliance with any applicable law.

11.5 **Confidential Information.** During the Term and at all times thereafter, Contractor will: (a) hold all Confidential Information in strict trust and confidence, (b) refrain from using or permitting others to use Confidential Information in any manner or for any purpose not expressly permitted by this Agreement, and (c) refrain from disclosing or permitting others to disclose any Confidential Information to any third party without obtaining the JUDICIAL COUNCIL's express prior written consent on a case-by-case basis. Contractor will disclose Confidential Information only to its employees or contractors who need to know that information in order to perform Services hereunder and who have executed a confidentiality agreement with Contractor at least as protective as the provisions of this section. The provisions of this section shall survive the expiration or termination of this Agreement. 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. The JUDICIAL COUNCIL owns all right, title and interest in the Confidential Information. Contractor will notify the JUDICIAL COUNCIL promptly upon learning of any unauthorized disclosure or use of Confidential Information and will cooperate fully with the JUDICIAL COUNCIL to protect such Confidential Information. Upon the JUDICIAL COUNCIL's request and upon any termination or expiration of this Agreement, Contractor will promptly (a) return to the JUDICIAL COUNCIL or, if so directed by the JUDICIAL COUNCIL, destroy all Confidential Information (in every form and medium), and (b) certify to the JUDICIAL COUNCIL 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 JUDICIAL COUNCIL shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.

11.6 Ownership of Deliveries. 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 Delivery in whole or part, in any manner or form, or authorize others to do so, without the written consent of the JUDICIAL COUNCIL.

11.7 Publicity. Contractor shall not make any public announcement or press release about this Agreement without the prior written approval of the JUDICIAL COUNCIL.

11.8 Choice of Law and Jurisdiction. California law, without regard to its choice-of-law provisions, governs this Agreement. The parties shall attempt in good faith to resolve informally and promptly any dispute that arises under this Agreement. Jurisdiction for any legal action arising from this Agreement shall exclusively reside in state or federal courts located in California, and the parties hereby consent to the jurisdiction of such courts.

11.9 Negotiated Agreement. This Agreement has been arrived at through negotiation between the parties. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code section 1654.

11.10 Amendment and Waiver. Except as otherwise specified in this Agreement, no amendment or change to this Agreement will be effective unless expressly agreed in writing by a duly authorized officer of the JUDICIAL COUNCIL. A waiver of enforcement of any of this Agreement's terms or conditions by the JUDICIAL COUNCIL is effective only if expressly agreed in writing by a duly authorized officer of the JUDICIAL COUNCIL. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

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

11.12 Follow-On Contracting. No person, firm, or subsidiary who has been awarded a Consulting Services agreement may submit a bid for, nor be awarded an agreement for, the providing of services, procuring goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of this Agreement.

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

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

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

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

EXHIBIT D Defined Terms

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

“**Agreement**” is defined on the Coversheet.

“**Contractor**” is defined on the Coversheet.

“**Confidential Information**” means: (i) any information related to the business or operations of the JUDICIAL COUNCIL, including information relating to the JUDICIAL COUNCIL’s personnel and users; and (ii) all financial, statistical, personal, technical and other data and information of the JUDICIAL COUNCIL (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 JUDICIAL COUNCIL’s satisfaction that: (a) Contractor lawfully knew prior to the JUDICIAL COUNCIL’s first disclosure to Contractor, (b) a third party rightfully disclosed to Contractor free of any confidentiality duties or obligations, or (c) is, or through no fault of Contractor has become, generally available to the public.

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

“**Contract Amount**” is defined on the Coversheet.

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

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

“**Effective Date**” 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.

“**JUDICIAL COUNCIL**” is defined on the Coversheet.

“**Judicial Branch Entity**” or “**Judicial Branch Entities**” means any 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.

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

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

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

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

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

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

EXHIBIT E
Work to Be Performed

1. DEFINITIONS

Terms defined below and elsewhere throughout the Contract Documents shall apply to the Agreement as defined.

A. "Annual Inventory Report" shall be the summary of Monthly Activity Reports of receipt and return dates, order numbers, quantity of cartons and the final inventory level at the rates set forth in the Term's Rate and Fee Schedule.

B. "Backup Media" shall mean 12-24 LTO, DLT, SOLT, AIT, AIT3 or similar secured tapes in secure/lockable/fire-water-heat-cold resistant containers and any written/backup materials. Tapes are stored and sealed in cartons.

C. "California State Holiday" individually and collectively means New Year's Day, Martin Luther King, Jr., Day, Lincoln's Birthday, Washington's Birthday, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving and Christmas Day.

D. "Contractor's Storage Location" shall mean the location of the off-site storage facility, at ORM Information Management Services of San Francisco LLC, 41099 Boyce Road, Fremont. CA 94538.

E. "Emergency Retrieval/Delivery" shall include weekends and holidays. Orders shall be placed before 1:00 PM and delivered within four (4) hours.

F. "Monthly Activity Report(s)" shall mean the month's receipt and return dates, order numbers, quantity of cartons and the month's inventory level at the rates set forth in the Term's Rate and Fee Schedule.

G. "Retrieval/Delivery Drop-off Location" shall mean the pick-up and drop-off point in the JUDICIAL COUNCIL, 455 Golden Gate Avenue, San Francisco, third floor, Judicial Council Lobby.

H. "Retrieval/Delivery Services" shall mean weekly, special and emergency pick-up and delivery services using Contractor's own labor and pallets. Retrieval/Delivery Services shall be available twenty-four (24) hours a day, three hundred sixty-five (365) days a year.

1. "Weekly Retrieval/Delivery" shall mean services occurring on Tuesdays, between 10:00 AM and 2:00 PM, excluding California State Holidays.

J. "Expedited Retrieval/Delivery" shall mean orders placed before 3:00 PM and delivered by the next business day.

K. "Emergency Retrieval" shall mean orders placed at any time, twenty-four (24) hours a day, three hundred sixty-five (365) days a year, and delivered within eight (8) hours of request.

L. "Transition Services" shall mean the transition of 80 stored cartons from the JUDICIAL COUNCIL that will require inner and outer packaging materials, without charge from the Contractor. The Contractor's services of re-positioning, in-take, labeling and shelving of 80 cartons from the Retrieval/Delivery Drop-off Location to the Contractor's Storage Location shall be at JUDICIAL COUNCIL expense. Transition services shall occur in the first quarter of the Initial Term of the Agreement only.

1. **SCOPE OF SERVICES.** The Contractor will provide off-site data storage and related services:

A. Scheduled weekly pickup and off-site storage of data Backup Media from production site located at 455 Golden Gate Avenue, San Francisco, CA 94102-3688. Off-site storage locations must be sufficiently remote from the production location so as to assure that the storage site would not be affected by any man-made or natural disaster that affects the production location.

B. Scheduled weekly delivery of data Backup Media that is due to be returned to the production site.

C. On-demand delivery of data Backup Media to the production site or alternate site on an expedited basis during the workday or after hours.

D. On-demand delivery of data backup material to the production site or alternate site on an emergency basis via courier or other means within eight (8) hours of request, twenty-four hours a day, three hundred sixty-five (365) days per year inclusive of holidays.

E. The provision of tape transport and storage containers necessary to facilitate pickup, storage and delivery of Backup Media.

F. Transition services as delineated in paragraph 4. Transition Plan.

G. An assigned account representative that is available to meet with at critical points during the Term period.

3. STATEMENT OF THE WORK

A. Retrieval/Delivery Services will be provided, as defined, above, within the timeframes noted.

B. Backup media, if in stored in a physical format, shall be stored within the State of California. If stored in an electronic format, backup media shall be stored within the United States.

C. Monthly Activity Reports shall be provided with the current inventory level, and shall be attached to the monthly invoice and Appendix B - Acceptance and Sign-off Form to the JUDICIAL COUNCIL Work Manager.

D. Provide an Annual Inventory Report, which is the summary of the Monthly Activity Reports and final inventory level to the JUDICIAL COUNCIL Work Manager.

E. If the Contractor cannot accommodate a particular Expedited Retrieval/Delivery or Emergency Retrieval/Delivery request within the established timeframe, the Contractor will communicate with the JUDICIAL COUNCIL Work Manager as soon as non-accommodation is known.

F. The Contractor shall submit a monthly invoice, Monthly Activity Report, and a monthly Acceptance and Sign-off Form to the JUDICIAL COUNCIL Work Manager.

4. TRANSITION PLAN. When Transition Services are necessary and by request of the JUDICIAL COUNCIL Work Manager, the services include, but are not limited to, providing secured containers and cartons for Backup Media to the Retrieval/Delivery Drop-off Location for JUDICIAL COUNCIL packaging, delivery to the Contractor's Storage Location, in-take and shelving services for 80 canons. The Transition Plan will allow the Work to continue without interruption or adverse effect and will facilitate an orderly transfer of canons. The cartons for transition contain multi-utility (small/medium) tape containers that fit between 12- 24 LTO, DLT, SOLT, AIT, AIT3 or similar type units in secure/lockable/fire-water-heat-cold resistant containers.

5. JUDICIAL COUNCIL CONTACT WITH CONTRACTOR

A. Authorized JUDICIAL COUNCIL representatives may contact the facility twenty-four (24) hours a Day, seven (7) Days a week, three hundred sixty-five (365) days a year, to obtain information regarding the JUDICIAL COUNCIL's account, Backup Media or any other service request.

B. The software control system shall be Access with access by authorized JUDICIAL COUNCIL representatives. The performance of the system shall allow for Monthly Activity Reports and an Annual Inventory Report.

C. The JUDICIAL COUNCIL may also use the Contractor's website www.grmdocumentmanagement.com in order to remotely maintain and manage a disaster recovery plan and monitor account data protection. Authorized JUDICIAL COUNCIL representatives will be the following:

Name	User ID	Work Phone
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TBD

6. CONTRACTOR INFORMATION

A. The off-site store facility should provide the following features:

- i. Earthquake resistant construction;
- ii. Environmentally controlled storage facility, which provides 24 hour/365 day air conditioning, which controls temperature, humidity, and air exchange (maximum temperature of 75° F (22° C), 60° (16° C) minimum temperature; relative humidity: 60% maximum, 30% minimum);
- iii. Automated non-water fire suppression system;
- iv. Automatically transferred back-up power,
- v. 7x24x365 monitoring of security, alarm and fire detection systems;
- vi. On-line card key access systems for all doors; and
- vii. Electronic gate entry to inside loading/unloading area.

8. The pickup and delivery vehicles should be specifically equipped, alarmed, unmarked service vehicles which include:

1. Alarm-equipped cab and cargo areas;
- ii. Mobile radio and cellular communications;
- iii. Portable HALON fire extinguishers; and
- iv. Facilities to transport Customer data in locked, tamper resistant and fire/water/heat/cold resistant, locked containers.

C. The Contractor's driver will be in uniform and carry an identification badge. The Contractor's driver will carry a scanner with all required information regarding the JUDICIAL COUNCIL's account, as well as a cellular phone for constant communication with the Contractor's facility and outside necessary contact.

D. Contractor's contact information for Contractor's Account Manager, **TBD**, is as follows:

Account Manager: E-mail:

Telephone: Website:

7. **CONTRACTOR' S RESPONSIBILITIES.** The Contractor will have the following responsibilities under this Contract:

- i. Work closely with the JUDICIAL COUNCIL Work Manager;
- ii. Perform and prepare Work as delineated;
- iii. Proactively assist with resolution of issues with any aspect of the Work; and
- iv. Work with JUDICIAL COUNCIL Work Manager to manage and coordinate work and knowledge transfer.

8. **JUDICIAL COUNCIL'S RESPONSIBILITIES.** The JUDICIAL COUNCIL Work Manager will be responsible for managing, scheduling, and coordinating all Work activities, including Work plans, timelines, and resources, and escalating issues for resolution to JUDICIAL COUNCIL management.

END OF EXHIBIT

RFP Title: Off-site Storage
RFP No: ITSO-2017-04-RBB

EXHIBIT F
Fees and Rates Schedule

TBD