

This contract for services ("Agreement") is made and entered into this **1st** day of **January 2017** (the "Effective Date") by and between **ACI Enterprises, Inc. (DBA ACI Specialty Benefits)**, a California S-Corporation with its principal place of business at 6480 Weathers Place, Suite 300, San Diego, CA 92121 hereinafter referred to as "ACI" and **Superior Court of California, County of San Bernardino** with its principal place of business at 247 West Third Street, 11th Floor, San Bernardino, CA 92415-0302, hereinafter referred to as "The Company." ACI is an independent contractor and not an employee of the Court.

RECITALS

- A. This Agreement will provide and arrange for the provision of ACI's program services to The Company employees and all family members of such employees ("Participants") in accordance with the terms and conditions of this Agreement. ACI must obtain the Courts written permission in advance before it can assign the contract.
- B. The Company will pay periodic fees to ACI for the provision of program services to Participants as outlined in Section VI. Periodic Fees and Participant Charges.

AGREEMENT

Now, therefore, in consideration of the above, ACI and The Company agrees as follows:

I. CONTRACT DOCUMENTS

Incorporated by reference into this Agreement are the following:

- A. This Service Agreement.
- B. Exhibit A: Summary of Benefits.
- C. Exhibit B: General Terms and Conditions/Defined Terms.

II. REPRESENTATIVES

Notices, as required in this Agreement, will be provided to the following:

For The Company:

Court Executive Officer
247 West Third Street, 11th Floor
San Bernardino, CA 92415-0302

For ACI:

Ann D. Clark, Ph.D.
CEO/Founder
6480 Weathers Place, Suite 300
San Diego, CA 92121

III. PROJECT MANAGERS

For The Company:

Director of Human Resources
247 West Third Street, 1st Floor
San Bernardino, CA 92415-0312

For ACI:

Tandice Tinney
VP Service Operations
6480 Weathers Place, Suite 300
San Diego, CA 92121

IV. DEFINITIONS

- A. **Employee or employee:** A judicial officer of the Court or a person employed by the Court.
- B. **Services:** The services to which Participants are entitled under this Agreement, and the services to be provided to The Company hereunder, as set forth in Exhibit A – Benefits Summary.
- C. **Short-Term Sessions:** A block of sessions available under the program intended to be applied to situations in which the EAP Case Manager believes that the presenting issues can be reasonably and appropriately resolved in the sessions allotted and defined in Exhibit A.
- D. **Provider Network:** A network of professionals licensed by the state in which they practice. EAP providers have a minimum education level of Masters Degree, plus five years of corporate and/or EAP experience. Such professionals are employed by or under contract with ACI to provide services. These professionals are typically MFTs, LCSWs, Psychologists and equivalent as state licensing allows.
- E. **Limitations:** Any provision of this Agreement which restricts services and/or products.
- F. **Coverage:** Any employee of The Company and any family member associated with that employee.
- G. **CISM:** Critical Incident Stress Management – The totality of services provided in relation to an incident of traumatic event affecting The Company.
- H. **CISD:** Critical Incident Stress Debriefing – A meeting and discussion either on-site or on-line (via webinar) regarding a qualifying incident. These services are conducted by specially trained and qualified ACI Network Providers.
- I. **Personal Services:** Concierge services offer information and referrals, on an unlimited basis, for any type of personal convenience in the broad category of personal service. ACI Concierge Service acts as an information service only and does not cover the cost of services nor does ACI guarantee delivery and/or quality of service provided by vendors.
- J. **Intake Line:** A 24-7 toll free service to provide urgent provider contact with a distressed Participant.
- K. **Session:** In-person or telephone consultation related to a Participant's concerns. Concerns include but are not limited to behavioral health and wellness, including substance abuse, work and life issues. Sessions and covered concerns are defined by the program definitions and outlined in Exhibit A.

V. SCOPE OF SERVICES

- A. **Employee Assistance Program (EAP):** ACI agrees to provide EAP services which include but are not limited to confidential sessions for diagnosis, referral and short-term problem assessment for issues related to marital, parent-child, alcohol and other drug abuse, emotional,



and other personal challenges or stresses to Participants of The Company. Telephonic models will provide assessment and referral only.

- B. **Work/Life:** ACI agrees to provide customized research, tailored educational materials and referrals on childcare and eldercare topics; unlimited telephone consultation on legal issues and referrals to local attorney when requested; unlimited telephone consultation on financial matters; and access to the financial and legal help page of the ACI website.
- C. **Training:** ACI will conduct employee orientation meetings, management training sessions and other Live N Learn seminars as outlined in Exhibit A. Attendance minimums may apply. ACI requires a three (3) business day notice in order to cancel a scheduled training. Failure to provide such notice may result in a late cancellation fee. Support for lay-offs, downsizing and open-enrollment is a limited benefit. The topics of Cultural Diversity and Sexual Harassment are excluded from EAP offerings. ACI will provide these through outside consultants as requested at an additional cost.
- D. **Critical Incident Response:** ACI will respond with CISM services relating to a distressing and traumatic event occurring in the workplace on an unlimited basis. Each CISM response is limited to two (2) on-site hours per incident unless otherwise noted in Exhibit A. Additional hours are available as a cost pass-through as outlined in Exhibit A.
- E. **Materials:** ACI shall be responsible for supplying all materials necessary to perform the services set forth in Exhibit A. ACI will provide 2,000 printed brochures and wallet cards per year. All materials will be made available electronically or by CD. Additional materials can be purchased by the Company at ACI's actual and reasonable cost. Requested hard copy materials will be shipped to The Company via first class mail. Overnight and express delivery can be provided at an additional cost.
- F. **Access:** ACI will provide access to a toll-free line available 24/7 for counseling and crisis intervention.
- G. **Account Management:** ACI will designate an Account Manager as the main point of contact assisting in the overall design, development, implementation and management of the services.
- H. **Supervisory Referrals:** ACI shall respond to supervisory/job performance referrals with adherence to confidentiality and appropriate job performance recommendations. ACI will provide follow-up as determined by ACI to be necessary, to monitor referred Participants adherence to the agreed course of treatment.
- I. **Consultation:** ACI will provide ongoing consultation to include the overall design, development, implementation and management of the program. ACI will provide clinical expertise regarding performance and behavior related issues.
- J. **Reporting:** ACI shall provide The Company with quarterly utilization reports summarizing the service provided, including key metrics and demographic data. Utilization reports are created and standardized by ACI. Special reports may be requested and priced at time of request. In accordance with confidentiality laws and regulations ACI will only provide utilization reports to companies with an employee count of 115 or above. Year End Reports are provided upon

request. ACI will allow a review and audit of its records pertaining to the Agreement by the Court or its designees.

- K. **Confidentiality:** Information given to ACI by Participants seeking to access Benefits is considered confidential and is subject to privacy laws and regulations. ACI will release confidential information only upon written authorization by the Participant seeking assistance or an authorized representative. No confidential information will be disclosed without written authorization except under court order or as otherwise required by law. ACI is a HIPAA compliant organization.
- L. **HIPAA Compliance:** ACI warrants that it is compliant with all applicable state and federal laws regarding privacy and confidentiality of health information while performing under this Agreement. ACI may retain and use aggregated, non-individually identifiable data. In addition, ACI shall transport, handle and store Protected Health Information (as identified under HIPAA) and other personal data collected in accordance with all applicable state and federal laws, including without limitation, HIPAA.
- M. **Online Services:** A variety of websites and other online services, including but not limited to email, webinars, texting, are part of the services provided with the program.

VI. LIMITATIONS ON BENEFITS/SERVICES

- A. Services must be obtained from an EAP Provider through ACI. A Participant may obtain Services by calling 800-932-0034. Upon contact, ACI will determine the Participant's eligibility and arrange for Services. Participants must contact ACI for authorization prior to accessing services.
- B. In the event of any major disaster, act of God and/or epidemic, ACI shall provide to the extent practical, according to its best judgment, within the limitations of such facilities and personnel as are then available. ACI shall have no liability to The Company for any delay in providing or failure to provide services under such circumstances.

VII. EFFECTIVE DATE OF SERVICES

The Agreement and Initiation of Services as specified in this Agreement will be activated upon two (2) conditions being met:

- A. Receipt of fully executed contract: ACI and The Company must receive at least one original of the Agreement signed by an appropriate representative of ACI and counter-signed by an appropriate representative of The Company; and,
- B. Receipt of the payment of the Periodic Fees outlined in Section V. Periodic Fees and Participant Charges.

VIII. PERIODIC FEES AND PARTICIPANT CHARGES

- A. **Periodic Fees:** ACI shall invoice the Company by December 15, 2016 and The Company shall remit to ACI by January 1, 2017, an annual fee at the rate of \$1.29 per-employee-per-month for

each employee of the Court on record as of November 25, 2016.

- B. ***Cost of Ongoing Treatment:*** The Company shall inform all its employees that the cost of any treatment not specifically provided pursuant to this Agreement, shall be the responsibility of the Participant.
- C. ***Participant Charges:*** Participants will not be required to make co-payments to EAP or other ACI Providers for services. However, a Participant is responsible for paying for the services of any provider outside the ACI referral and network, and other such entities to whom the Participant may be referred and whom are not covered by this Agreement.

IX. EFFECTIVE DATE OF BENEFITS

- A. ***Initial Participant:*** All employees as specified by The Company as of Effective Date of this Agreement and all persons entitled to be Participants through such employees shall be entitled to receive Benefits as of 12:01 a.m. on stated Effective Date.
- B. ***Changes in Employee Count:*** Changes to the employee count may be made in the following manner:
 - 1. The Company may report employee count changes of 25 (or more) in writing (mail, fax or email).
 - 2. Addition of new employees or the reduction of force may result in changes in the rate and/or invoiced charges.
 - 3. Changes will be reflected in the form of a supplemental invoice, credit towards the next invoicing period, or refund if credit cannot be used before contract expires.
 - 4. Account audit requests must be submitted in writing (fax or email) and received by ACI Finance Department no later than 15 days after affected coverage period has closed for consideration.

X. TERM AND TERMINATION

- A. ***Termination of Individual Participant:*** If an employee ceases to meet the eligibility requirements of The Company, the coverage for Services under this Agreement for such employee, and all other Participants covered for Services through the employee, terminates automatically 30 days from the date of termination after which the employee ceases to meet the eligibility requirements of The Company.
- B. ***Term and Termination of The Company***
 - 1. **Term:** The initial term of this Agreement shall be from the January 1, 2017 through December 31, 2017. This is a one year contract. The Court may, at its sole discretion, renew this Agreement under the same terms and conditions and at the same periodic fee per employee per month for two (2) additional one-year terms in consecutive order unless otherwise terminated pursuant to the termination provisions in this Agreement. ("Renewal Terms"). This Agreement may be terminated as provided in Section 3 below or as provided for in Section 8 of Exhibit B: General Terms and Conditions/Defined Terms.

2. **Nonpayment.** If The Company fails to pay any amount due ACI within thirty (30) days after ACI's notice to The Company of, and invoice for the amount due, then ACI may terminate the rights of the Participants involved, effective upon ACI's issuance of notification of cancellation to The Company. Participants may be informed of such suspension.

- C. ***Extension of Benefits Upon Termination:*** If federal or state law requires The Company to make services available to certain Participants who lose eligibility for Benefits under this Agreement, The Company shall be solely responsible for complying with all applicable laws governing such continuation coverage, and for notifying eligible persons of the availability, terms, conditions and duration of, and of all changes in, such coverage. The above notwithstanding, ACI agrees to assist The Company in complying with such laws, (e.g. COBRA). ACI, in its sole discretion, may agree to continue to make Benefits available to such persons with appropriate compensation from The Company.

XI. COMPLAINTS, GRIEVANCE AND ARBITRATION

- A. ***Complaint and Grievance Procedure:*** Participants are entitled to present complaints and grievances involving services; and ACI and providers to ACI are obligated to seek to resolve such complaints and grievances. ACI has established a procedure for processing and resolving Participants' complaints and grievances. A copy of this procedure and the forms to be used to file a complaint or grievance are available from ACI and are posted on the ACI website at www.acispecialtybenefits.com.

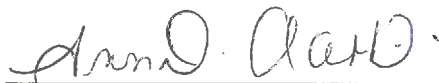
XII. MISCELLANEOUS

- A. ***Provider Insurance:*** At the time of admission to the ACI panel and at recertification, all ACI providers who will provide services to the Court must submit the following: 1) A copy of their current state license (must be in good standing); 2) A copy of liability insurance coverage of at least \$1 million (individual) and \$3 million (aggregate); and 3) A copy of current resume or vitae.
- B. ***Participant Consent:*** By this Agreement, The Company makes Services available to Participants; however, this Agreement shall be subject to amendment, modification and termination in accordance with the provisions hereof, or by mutual consent between ACI and The Company without the consent or concurrence of the Participants.
- C. ***Proprietary Materials:*** The Company acknowledges that ACI has developed and will develop in connection with this Agreement, certain symbols, trademarks, service marks, designs, data, processes, plans, procedures and information, all of which are proprietary information and trade secrets of ACI (collectively referred to as "Materials"). Such Materials include, without limitation, Materials relating to ACI's Quality Management/Utilization Management Program, the Intake Line and all Materials prepared and distributed by ACI in connection with its Employee Assistance Programs. The Company shall not use any of ACI's proprietary Materials, except as expressly contemplated by this Agreement, without prior written consent of ACI, and shall cease any and all usage of Materials immediately upon the termination of this Agreement or at ACI's request. The foregoing notwithstanding, ACI acknowledges that

information, records, and documents obtained from ACI are subject to the Public Records Act (California Rules of Court 10.500).

D. **Limited Liability:** Group acknowledges that the information and advice provided to participants by persons to whom participants are referred under this Agreement ("contractor") are not, expressly or impliedly, endorsed, recommended or approved by ACI. The relationship between ACI and a contractor is that of independent third party entities. ACI, its agents and affiliates are not agents or affiliates of any contractor. Contractors maintain a contractor-client relationship with participants, and contractors are solely responsible to participants for any and all services that they may provide to participants. ACI makes no warranties, expressed or implied, of any kind with respect to the services provided by a contractor. ACI shall not be liable for the negligence or wrongful acts or omissions of contractors.

In witness thereof, the parties have executed this agreement:



Ann D. Clark, Ph.D.
CEO/Founder
ACI Specialty Benefits

12/15/16
Date



Nancy CS Eberhardt
Interim Court Executive Officer
Superior Court of California,
County of San Bernardino

12-20-16
Date

SUMMARY OF BENEFITS

EXHIBIT A

Prepared for: Superior Court of California
County of San Bernardino
Provider: ACI Specialty Benefits
Policy: Employee Assistance Program:
Corporate
Summary Date: 07/22/2016
Start Date: 01/01/2017
Anniversary Date: 01/01/2018



Benefit Description

ACI Specialty Benefits (ACI) will provide employee assistance program (EAP) services, including assessment, referral and short-term problem resolution. Following assessment, the employee or family member may be referred for therapy or other professional services.

ACI will also provide comprehensive work/life referrals, resources and services.

Problem Assessment

- Face-to-Face Sessions

EAP Work/Life Services

- **Legal assistance** for **unlimited** number of issues per year. Includes 60-minute in-office or telephonic consultation with local attorney and 25% discount for continued services
- Telephonic **financial assistance** for **unlimited** number of issues per year. Includes 30-day financial coaching benefit with 90-day action plan take-away.
- **Unlimited child care, elder care, pet care** and **education** referrals
- **Unlimited** referrals and resources for **personal services**
- **Veteran Connection**
- **Identify theft prevention/recovery**. Includes 60-minute consultation
- **Affinity™ Online** work/life website services
- **100% Follow-up** for all requests, referrals and services utilized

Training and Orientations



Virtual and Onsite

- **Unlimited** Employee Orientations
- **Unlimited** Manager and Supervisor Trainings
- **Unlimited** Live 'N Learn Seminars
- Just-Do-It Training consultation and facilitation tools for onsite management
- 24/7 access to training videos on ACI's YouTube Channel

Clinical Services

- **Unlimited** clinical consulting on difficult employee issues
- Access to panel of in-house clinicians

Provider Network Availability

- Over 40,000 providers nationwide



ACI Specialty Benefits
800.932.0034
www.acispecialtybenefits.com

HR Support Services

- Critical Incident Response
 - Onsite Critical Incident Stress Debriefing (CISD)
 - Critical Incident Stress Management (CISM)
 - Disaster Contingency Consultation Materials
- Consultation for substance abuse case management and support for return-to-work transition
- Direct supervisory referrals for work performance problems
- Management consultation regarding difficult employee issues
- Consultation and development of policies to prevent workplace violence and manage high risk situations
- Support to Human Resources during workforce reductions, management changes, reorganizations, plant closures, and other transitions

Program Promotion and Web Services



ACI's comprehensive promotional plan includes:

- **Digital Marketing:** EAP flyers, brochures, summary plan descriptions, wallet cards, and supervisory resource manuals
- **Social Media and Content Marketing:** Social@ACI platforms, videos on YouTube, regularly updated content on ACI's Blog, and monthly HealthYMail™ e-newsletter
- **Mobile Marketing:** myACI App and Quick Response (QR) Codes
- **Web Services:**
 - **Landing Page:** website with access to services
 - **Virtual Folder:** HR and management resource center
 - **Affinity™ Online** work/life website services
 - Online access to ACI's website: www.acispecialtybenefits.com
- Co-branding with client's logo available

Program Access: Mobile Apps and Intuitive Technology

- 24-hour, 365 day-a-year nationwide toll free number (800.932.0034)
- Always live-answer
- Multilingual assistance, 175 languages
- **myACI App** and QR codes for mobile access
- **Social@ACI platforms** and **online portals** for convenient access

Reporting

- Quarterly utilization reports with executive overview
- Annual cost analysis available on request
- Full-color graphs and charts display key metrics and demographic data

Eligibility

- **Easy Access:** No cumbersome membership IDs or Social Security Numbers required
- **All Employees**
- **Dependents:** Spouse, domestic partners, dependents, **all family members regardless of location**

Termination of Benefits

30 days from employee termination date at no cost to employer



Program Assumptions**Onsite:**

- CISD and Layoff/RIF Support limited to 2 onsite hours per incident
- Trainer's travel fees are included
- Attendance minimums of 20 employees apply to onsite trainings

Materials:

- ACI Specialty Benefits provides unlimited virtual marketing materials from ACI's library of templates. ACI will provide 2,000 printed brochures and wall cards per year. Additional printed and custom materials are available at an additional cost
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EXHIBIT B: GENERAL TERMS AND CONDITIONS/DEFINED TERMS (BENEFITS)

I. GENERAL TERMS AND CONDITIONS

1. SERVICES

1.1 Services. Contractor shall provide the Services described in Contractor's standard policy(ies) and/or standard agreements issued to the Court as a result of a successful solicitation process, and as described in this Agreement. Contractor certifies that its standard policy(ies) and/or standard agreements contain the same or better Services as those stated in Contractor's proposal to the RFP named on the Coversheet. Contractor is responsible for providing all facilities, materials and resources (including personnel, equipment and software) necessary and appropriate for delivery of the Services and to meet Contractor's obligations under this Agreement.

1.2 Third Party or Court Services. Notwithstanding anything in this Agreement or Contractor's standard policy(ies) and/or standard agreements to the contrary, the Court shall have the right to perform or contract with a Third Party to provide the same or similar services. In the event the Court performs or contracts with a Third Party to perform any such service, Contractor shall cooperate in good faith with the Court and any such Third Party, to the extent reasonably required by the Court. Such cooperation shall include, without limitation, providing such information as a person with reasonable commercial skills and expertise would find reasonably necessary for the Court or a Third Party to perform its services relating to the Services.

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

(a) **Data Security.** Contractor shall use industry-standard safeguards against the destruction, loss, misuse, unauthorized disclosure, or alteration of Confidential Information. Contractor personnel and Subcontractors shall not attempt to access, and shall not allow access to the Court Data and other Confidential Information that is not required for providing the Work by such personnel or Subcontractors. In the event Contractor or a Subcontractor discovers or is notified of a breach or potential breach of security relating to the Court Data or other Confidential Information, Contractor shall promptly, at its own expense: (i) notify the Court Project Manager of such breach or potential breach; and (ii) if the applicable Court Data or other Confidential Information was in the possession of Contractor or Subcontractors at the time of such breach or potential breach, Contractor shall (1) investigate and cure the breach or potential breach and (2) take measures satisfactory to the Court to prevent such breach or potential breach from recurring.

(b) **Safety and Security Procedures.** Contractor shall maintain and enforce, at Contractor facilities, industry-standard safety and physical security policies and procedures.

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

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

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

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

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

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

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

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

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

2.8 No Gratuities or Conflict Of Interest. Contractor: (a) has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Court Personnel with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement; and (b) has no interest that would constitute a conflict of interest under Public Contract Code sections 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with the Court.

2.9 No Harassment/Non-Discrimination. Mandatory - Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of this Agreement, and Contractor takes all reasonable steps to prevent harassment from occurring. Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California's Fair Employment and Housing Act (Government Code sections 12990 et seq.) and associated regulations (Code of Regulations, title 2, sections 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor has notified in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor's obligations of non-discrimination. The Contractor shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

2.10 No Interference. To the best of Contractor's knowledge, this Agreement does not create a material conflict of interest or breach under any of Contractor's other contracts.

2.11 Iran Contracting Act. *Mandatory* - *if the Contract Amount is \$1,000,000 or more and Contractor did not provide to Court an Iran Contracting Act certification as part of the solicitation process, this section applies:* Contractor certifies either (a) it is not on the current list of persons engaged in investment activities in Iran ("Iran List") created by the California Department of General Services pursuant to PCC 2203(b), and is not a financial institution extending \$20,000,000 or more in credit to another person, for forty-five (45) days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the Iran List, or (b) it has received written permission from the Court to enter into this Agreement pursuant to PCC 2203(c).

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

2.13 National Labor Relations Board Orders. *Mandatory* - 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.

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

2.15 Services. (a) 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; (b) Contractor will use efficiently the resources or services necessary to provide the Services; and provide the Services in the most cost efficient manner consistent with the required level of quality and performance; and (c) all Services will be in accordance with Applicable Laws and other requirements of this Agreement. In the event any Services do not conform to the foregoing provisions of this Section 2.16, Contractor shall promptly correct all non-conformities.

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

2.17 Miscellaneous. The rights and remedies of the Court provided in this Section 2 will not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. The representations and warranties that Contractor makes in this Section 2 shall be true and accurate as of the Effective Date, and shall remain true during the term of this Agreement and the Termination Assistance Period. Contractor shall promptly notify the Court if any representation or warranty becomes untrue.

3. CONFIDENTIALITY

3.1 General Obligations. While performing Services under this Agreement, Contractor may gain access to Confidential Information that, if disclosed to Third Parties, may be damaging to the Court, its personnel, court users, or other government entity. The Court owns all right, title and interest in the Confidential Information. Contractor does not acquire any right or title to the 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 Court's express prior written consent on a case-by-case basis unless permitted by Applicable Law. Contractor will disclose Confidential Information only to Contractor Personnel or Subcontractors with a need to know in order to provide the Services hereunder and who have executed a confidentiality agreement with Contractor at least as protective as the provisions of this Section 3. Contractor will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Contractor protects its own confidential or proprietary information of a similar nature, and with no less than reasonable care and industry-

standard care. Contractor will notify the Court promptly upon learning of any unauthorized disclosure or use of Confidential Information and will cooperate fully with the Court to protect such Confidential Information. The provisions of this Section 3 shall survive beyond the expiration or termination of this Agreement.

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

4. INDEMNIFICATION

4.1 General Indemnity. Contractor shall indemnify, defend, and hold harmless Court and Court Personnel against all Claims founded upon: (a) an act or omission of Contractor, its agents, employees, independent contractors, or Subcontractors in the performance of this Agreement, and/or (b) a breach of a representation, warranty, or other provision of this Agreement. 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. Contractor shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement which would bind an indemnified party, without the Court's prior written consent, which consent shall not be unreasonably withheld. The Court shall have the right, at its option and expense, to participate in the defense and/or settlement of a claim through counsel of its own choosing. The Court will notify Contractor promptly in writing upon receiving any claim from an entity other than Contractor. 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. INSURANCE

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

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

(b) For all insurance policies required by this Section 7.0, Contractor will declare any deductible or self-insured retention (SIR). Any deductible or SIR shall be clearly stated on the appropriate certificate of insurance, personal and advertising injury, and liability assumed in a contract; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) **Commercial General Liability.** Commercial General Liability insurance (and if required Excess/Umbrella Liability insurance) for all of its operations written on an occurrence form with limits of not less than \$1 million per occurrence and a \$1 million annual aggregate limit of liability. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. The policy shall not include

exclusion for loss resulting from explosion, collapse, or underground perils. This insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought subject to the insurance policy limit of liability; and

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

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

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

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

6. TERM/TERMINATION

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

6.2 Termination for Convenience. The Court may terminate, in whole or in part, this Agreement for convenience (without cause) upon thirty (30) days prior written notice. The Court's notice shall specify the date on which termination shall become effective.

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

6.4 Rights and Remedies of the Court.

(a) All remedies provided for in this Agreement may be exercised individually or in combination with any other available remedy. Contractor shall notify the Court immediately if Contractor is in Default, or if a Third Party claim or dispute is brought or threatened that alleges facts that would constitute a Default under this Agreement. If Contractor is in Default, the Court may do any of the following: (i) withhold all or any portion of a payment otherwise due to Contractor, and exercise any other rights of setoff as may be provided in this Agreement or any other agreement between the Court and Contractor; (ii) require Contractor to enter into non-binding mediation; (iii) exercise, following notice, the Court's right of early termination of this Agreement as provided herein; and (iv) seek any other remedy available at law or in equity.

(b) If the Court terminates this Agreement in whole or in part for cause, the Court may acquire from

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

6.5 Survival. Termination of this Agreement shall not affect the rights and/or obligations of the Parties which arose prior to any such termination (unless otherwise provided herein) and such rights and/or obligations shall survive any such expiration or termination. Rights and obligations which by their nature should survive shall remain in effect after termination or expiration of this Agreement, including Sections 3 through 8 of these General Terms and Conditions.

7. SPECIAL PROVISIONS

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

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

(a) Contractor shall assign to the Court all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by Contractor for sale to the Court pursuant to the bid. Such assignment shall be made and become effective at the time the Court tenders final payment to the Contractor. (GC 4552).

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

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

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

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

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

8. GENERAL

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

8.2 Assignment. This Agreement will not be assignable by Contractor in whole or in part (whether by operation of law or otherwise) without the prior written consent of the Court. Any assignment made in contravention of the foregoing shall be void and of no effect. Subject to the foregoing, this Agreement will be binding on the Parties and their permitted successors and assigns.

8.3 Audits. Contractor and Court agree that except for Protected Health Information ("PHI"), information, records, and documents obtained from the Contractor are subject to the Public Records Act (California Rules of Court 10.500. Contractor shall allow the Court and its designees to review and audit Contractor's documents and records relating to this Agreement, and Contractor shall retain such documents and records for a period of four years following final payment under this Agreement. Contractor shall correct errors and deficiencies by the 20th day of the month following the review or audit. Contractor shall provide to the Court and Court Contractors, on Contractor's premises (or, if the audit is being performed of an Subcontractor, Subcontractor's premises if necessary), space, office furnishings (including lockable cabinets), telephone and facsimile services, utilities and office related equipment and duplicating services as the Court or such Court Contractors may reasonably require to perform the audits described in this Section. *Mandatory - Without limiting the foregoing, this Agreement is subject to examinations and audit by the State Auditor for a period three years after final payment, if Contract Amount is \$10,000 or more.*

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

8.5 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.

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

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

8.8 Limitation of Liability. In no event shall the Court be liable to Contractor, its officers, employees, Subcontractors, or Third Parties for any actual, incidental, indirect, special, or consequential damages arising from or relating to this Agreement, including lost profits or revenue. The Court's liability for direct damages arising from or related to this Agreement, for any cause whatsoever, and regardless of the form of action, whether in

contract, tort, strict liability or any other legal theory, shall not exceed the amounts paid to Contractor by the Court under this Agreement. Neither the Court nor Court Personnel will be personally responsible for liabilities arising under this Agreement, regardless whether the Court was advised of the possibility of such loss or damage.

8.9 Notices. Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be: (a) delivered in person, (b) sent by registered or certified mail, or (c) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address and recipient set forth in Cover sheet. Either Party may change its address for notification purposes by giving the other Party written notice of the new address in accordance with this Section. Notices will be considered to have been given at the time of actual delivery in person, three (3) Business Days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service.

8.10 Order of Precedence. Any conflict among or between the documents making up this Agreement will be resolved in accordance with the following order of precedence (in descending order of precedence): (a) Exhibit B: General Terms and Conditions/Defined Terms; and (b) Contractor's standard policy(ies) and/or standard agreements, except where mandated by Applicable Law. All Court-issued competitive solicitation and related documents (e.g., the Court's RFP, IFP, Addendum, Questions and Answers), and cost or technical specifications contained in Contractor's bid or proposal submitted in response to the Court's competitive solicitation, may be relied upon for the purpose of clarifying, illustrating, or explaining the intention and understanding of the parties as to the performance of this Agreement.

8.11 Publicity. News releases and other public disclosures pertaining to this Agreement will not be made by Contractor without prior written approval of the Court.

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

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

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

8.15 Miscellaneous. This Agreement has been arrived at through negotiation between the Parties. Neither Party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code section 1654. This Agreement constitutes the entire agreement of the Parties, is intended to be a complete integration, and there are no prior or contemporaneous different or additional agreements with respect to the subject matter hereof. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

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

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

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

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

- (e) Any commencement of Work prior to Agreement approval shall be at Contractor's own risk.
- (f) Time is of the essence regarding Contractor's performance of the Work.

II. DEFINED TERMS¹

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

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

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

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

"Confidential Information" means: (i) any information related to the business or operations of the Court, including information relating to Court's personnel and users; (ii) all financial, statistical, personal, technical and other data and information of the Court (and proprietary information of third parties provided to Contractor) that is designated confidential or proprietary, or that Contractor otherwise knows, or would reasonably be expected to know is confidential; and (iii) all Court Materials and Court Data. Confidential Information does not include information (that Contractor demonstrates to the Court's satisfaction, by written evidence): (a) that Contractor lawfully knew prior to the Court's first disclosure to Contractor, (b) that a Third Party rightfully disclosed to Contractor free of any confidentiality duties or obligations, or (c) that is, or through no fault of Contractor has become, generally available to the public.

"Contract Amount" means total dollar amount of this Agreement to be paid to Contractor, inclusive of any exercised options.

"Contractor Personnel" means person or persons employed by the Contractor.

"Court" means the Superior Court of California, County of San Bernardino.

"Court Contractors" means the agents, subcontractors and other representatives of the Court, other than Contractor and Subcontractors.

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

"Court Materials" means materials owned, licensed, made, conceived, or reduced to practice by the Court or a Court Contractor, any materials developed or acquired separate from this Agreement, and all modifications, enhancements, derivative works, and intellectual property rights in any of the foregoing.

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

"Court Project Manager" means the individual appointed by the Court to communicate directly with the Contractor Project Manager.

"Cover sheet" refers to the first sheet or sheets of this Agreement named Cover sheet.

“Default” means if any of the following occurs: (i) Contractor breaches any of Contractor’s obligations under this Agreement, and this breach is not cured within ten (10) days following notice of breach or is not capable of being cured within this cure period; (ii) Contractor or Contractor’s creditors file a petition as to Contractor’s bankruptcy or insolvency, or Contractor is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, goes into liquidation or receivership, or otherwise loses legal control of its business; (iii) Contractor makes or has made under this Agreement any representation, warranty, or certification that is or was incorrect, inaccurate, or misleading; or (iv) any act, condition, or item required to be fulfilled or performed by Contractor to (x) enable Contractor lawfully to enter into or perform its obligations under this Agreement, (y) ensure that these obligations are legal, valid, and binding, or (z) make this Agreement admissible when required is not fulfilled or performed.

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

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

“Parties” means the Court and Contractor, collectively.

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

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

“Protected Health Information (PHI)” collectively means protected health information as defined in Code of Federal Regulations Title 45, Subtitle A, Subchapter C, Part 160, Section 160.103 and medical information as defined in California Civil Code Section 56.05.

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

“Term” means the term of this Agreement.

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

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

“Services” means each of the following, individually and collectively: the services provided under this Agreement, and any incidental services, items, or responsibilities that are reasonable and customary in the industry and not specifically described in this Agreement, but which are required for the performance of Contractor’s obligations and delivery of services.

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

End of Exhibit B