

ATTACHMENT 2 SAMPLE MASTER AGREEMENT AND PARTICIPATING ADDENDUM

MASTER AGREEMENT

AGREEMENT XX XX

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

2. This Agreement is effective as of **[Date]** (“Effective Date”) and expires on **[Date]** (“Expiration Date”). This Agreement includes two one year options to extend through **[Date or “N/A”]**.

3. The title of this Agreement is: Master Agreement for **Mental Health Evaluation Services**

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

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

- Appendix A – Services and Deliverables
- Appendix B – Payment Provisions
- Appendix C – General Provisions
- Appendix D – Defined Terms
- Appendix E – Participating Addendum
- Appendix F – Unruh Civil Rights Act and FEHA Certification

ESTABLISHING JBE’S SIGNATURE	CONTRACTOR’S SIGNATURE
Superior Court of California, County of Sonoma	CONTRACTOR’S NAME <i>(if Contractor is not an individual person, state whether Contractor is a corporation, partnership, etc., and the state or territory where Contractor is organized)</i>
BY <i>(Authorized Signature)</i> 	BY <i>(Authorized Signature)</i> 
PRINTED NAME AND TITLE OF PERSON SIGNING Alex Calvo, Court Executive Officer	PRINTED NAME AND TITLE OF PERSON SIGNING
DATE EXECUTED	DATE EXECUTED
ADDRESS 701 Ocean Street, Judges Chambers Santa Cruz, CA 95060	ADDRESS

APPENDIX A

Services and Deliverables

1. Background, Purpose, and Ordering.

The Establishing JBE is one of 58 trial courts in California. The Establishing JBE is located in Santa Cruz, CA and has 12 Judges and 1 Commissioner, and performs approximately 400 competency evaluations each year.

The Santa Cruz Court and other nearby courts, including but not limited to the Superior Courts of Lake and Mendocino Counties (“Nearby Courts”), require the services of professional mental health evaluators to conduct competency evaluations on individuals involved in court proceedings. The Sonoma Court desires to establish a list of qualified mental health evaluators to provide such services.

The Establishing JBE and the Participating Entities have the option of using the services of the mental health evaluator that has been awarded this Master Agreement under RFP # 31. Other courts in areas such as Napa, Solano, Contra Costa, Alameda, Marin and Sacramento may also utilize services from the Master Agreement. This Master Agreement requires that each court using mental health evaluator services enter into a separate Participation Addendum outlining specific requirements for that court. Contractor may, or may not, choose to enter into a Participating Addendum with Participating Entities and/or any other court.

- 1.1 This Agreement sets forth the terms and conditions that apply to Contractor’s provision of Work to the JBEs. “Work” shall mean the Services and Deliverables as further described in Sections 2 and 3 below. This Agreement does not obligate a JBE to place any orders for Work under this Agreement, and does not guarantee Contractor a specific volume of orders.
- 1.2 Each JBE shall have the right to place orders under this Agreement for any of the Work. A JBE may place orders for Work by entering into a Participating Addendum with Contractor in the form attached as Appendix E to this Agreement (“Participating Addendum”). After a Participating Addendum has been presented to the Contractor by a JBE, the Contractor shall acknowledge, sign, and perform under the Participating Addendum in a timely manner. Contractor shall provide the Work for each JBE in accordance with the terms of this Agreement and the applicable Participating Addendum.
- 1.3 Each Participating Addendum constitutes and shall be construed as a separate, independent contract between Contractor and the JBE signing such Participating Addendum, subject to the following: (i) each Participating Addendum shall be governed by this Agreement, and the terms in this Agreement are hereby incorporated into each Participating Addendum; (ii) the Participating Addendum may not alter or conflict with the terms of this Agreement, or exceed the scope of the Work provided for in this Agreement; and (iii) the term of the Participating Addendum may not extend beyond the expiration date of the Agreement. The Participating Addendum and this Agreement shall take precedence over any terms and conditions included on Contractor’s invoice or similar document.

- 1.4** The JBE signing the Participating Addendum shall be solely responsible for: (i) the acceptance of and payment for the Work under such Participating Addendum; and (ii) its obligations and any breach of its obligations. Any breach of obligations by a JBE shall not be deemed a breach by any other JBE. Under no circumstances shall a JBE have any liability or obligation except pursuant to a Participating Addendum signed by such JBE, nor shall any breach by a JBE under a Participating Addendum give rise to a breach under any other Participating Addendum or be deemed grounds for termination of this Agreement by Contractor. The Establishing JBE shall have no liability or responsibility of any type related to: (i) any other JBE's use of or procurement through this Agreement (including any Participating Addendum), or (ii) such JBE's business relationship with Contractor. The Establishing JBE makes no guarantees, representations, or warranties to any Participating Entity.
- 1.5** This Agreement is a nonexclusive agreement. Each JBE reserves the right to provide, or have others provide the Work. Contractor shall reasonably cooperate with any third parties retained by a JBE to provide the Work.

2. Services.

2.1 Description of Services and Deliverables. As ordered by each JBE under a Participating Addendum, Contractor shall perform some or all the following services ("Services") and deliverables ("Deliverables") for the JBEs:

2.1.1 1368/1370 PC Exams

Receive PC 1368/1370 referrals from the court for criminal proceedings and interview the defendant, including examining his/her understanding of the charge(s) against him/her and of court procedures, perform an evaluation for psychiatric history, drug usage, and general family history, and conduct appropriate collateral interviews to assess competency. A formal written report assessing competency, and if requested, medications, is required in a timely manner. Testimony may also be required.

Sell (involuntary medication) evaluations may also be ordered by the court, in which a formal written report is required and possible testimony.

2.1.2 1026/1027 PC Exams

Make examinations and investigations and testify whenever summoned in any proceeding in which the sanity of the defendant is in question. Examination and investigation shall include, but not be limited to, the psychological history of the defendant, the facts surrounding the commission of the acts forming the basis for the present charge used by the psychiatrist or psychologist in making his or her examination of the defendant, the present psychological or psychiatric symptoms of the defendant, if any, the substance abuse history of the defendant, the substance use history of the defendant on the day of the offense, a review of the police report for the offense, and any other credible and relevant material reasonably necessary to describe the facts of the offense.

2.1.3 Competency for juveniles (709 WI)

Receive juvenile competency referrals from the court for juvenile delinquency proceedings and interview the defendant, including examining his/her understanding of the charge(s) against him/her and of court procedures, perform an evaluation for psychiatric history, drug usage, and general family history, and conduct appropriate collateral interviews to assess competency. A formal written report assessing

competency, and if requested, medications, is required in a timely matter. Testimony may also be required.

2.1.4 Psychosexual disorders [288.1 PC] and Abel Assessments

Receive 288.1 referrals from the Court for criminal proceedings and provide in a timely manner, a formal written report assessing the mental condition of the defendant. Testimony may also be required.

2.1.5 Expert Testimon

As necessary, evaluator may need to appear in court to testify regarding the evaluator's mental health examination of a defendant and/or the evaluator's report.

2.1.6 Non In-Person Evaluations

The Court may explore the use of Telepsychiatry to conduct mental health evaluations (whole or in part) during the life of the Master Agreement. Upon approval of the Sonoma Court and/or Nearby Court, if an evaluator chooses to utilize this type of evaluation, the evaluator will be required to provide for evaluator's own hardware (laptop, etc.) and agrees to utilize the Sonoma Court's or Nearby Court's recommended interface connection method.

2.1.7 Expectations in all Reports

Evaluators must document the date(s) and length of interview(s) and collateral contacts, the documents reviewed, and mental status or test procedures utilized. The basic requirement for every mental exam includes documentation of results of a formal mental status examination which covers cognitive and psychiatric functioning or the equivalent in psychological test screening. Reports must always be documented followed by the expert's opinion, conclusions, and responses to any specific questions posed.

Evaluators must be proficient in forensic report writing and have the ability to write clear, high quality, and professional reports to the Court.

Recordation methods used in clinical assessments need to be legible and of sufficient detail such that opposing parties can review and reconstruct the findings.

Reports must be submitted on time and via the required submission process. Time limits and submission process will vary by each case type. Reports must comply with all applicable legal requirements, including any requirements in the California Rules of Court, Rule 4.130.

Mental health evaluators must comply with all applicable legal requirements, including any guidelines issued by California Department of State Hospitals ("DSH").

For Psychologists

Perform psychological testing using current and modern testing methodologies.

For Psychiatrists

Perform psychiatrist evaluations with proficiency in psychiatric structured interview tools.

2.2 Acceptance Criteria.

The Services and Deliverables must meet the following acceptance criteria or the JBE may reject the applicable Services or Deliverables. The JBE may use the attached Acceptance and Signoff Form to notify Contractor of the acceptance or rejection of the Services and Deliverables. Contractor will not be paid for any rejected Services or Deliverables.

2.3 Project Managers. Each JBE may designate a project manager. The Establishing JBE's project manager is: **Theresa Faull**. A JBE may change its project manager at any time upon notice to Contractor without need for an amendment to this Agreement. Contractor's project manager is: **[Insert name]**. Subject to written approval by the Establishing JBE, Contractor may change its project manager without need for an amendment to this Agreement.

2.4 Service Warranties. Contractor warrants to the JBEs 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 Deliverable and the Services will conform to the requirements of this Agreement and all applicable specifications and documentation.

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

3 Acceptance or Rejection. All Services and Deliverables are subject to acceptance by each JBE. The JBE may reject any Services or Deliverables that (i) fail to meet applicable requirements or specifications, including acceptance criteria, (ii) are not as warranted, or (iii) are performed or delivered late (without prior consent by the JBE).

APPENDIX B
Payment Provisions

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

 - 2.1 Amount.** Contractor will invoice the following amounts for Services or Deliverables that the JBE has accepted:

 - *See Attachment A-2 Cost and Fees*
 - 2.2 No Advance Payment.** The JBEs will not make any advance payments.
- 3 Expenses.** Except as set forth in this section, no expenses relating to the Services and Deliverables shall be reimbursed by the JBEs.

 - 3.1 Allowable Expenses.** Contractor may submit for reimbursement, without mark-up, only the following categories of expense:

 - *N/A*
 - 3.2 Required Certification.** Contractor must include with any request for reimbursement from the JBE a certification that Contractor is not seeking reimbursement for costs incurred 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 reimbursement from the JBE 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 JBE in arrears no more frequently than monthly. Contractor's invoices must include information and supporting documentation acceptable to the JBE. Contractor shall adhere to reasonable billing guidelines issued by the JBE from time to time.
 - 4.2 Payment.** The JBE will pay each correct, itemized invoice received from Contractor after acceptance of the applicable Services or Deliverables, in accordance with the terms of this Agreement and the applicable Participating Addendum. Notwithstanding any provision to the contrary, payments to Contractor are contingent upon the timely and satisfactory performance of Contractor's obligations.

- 4.3 No Implied Acceptance.** Payment does not imply acceptance of Contractor's invoice Services or Deliverables. Contractor shall immediately refund any payment made in error. The JBE shall have the right at any time to set off any amount owing from Contractor to the JBE against any amount payable by the JBE to Contractor under this Agreement.
- 5. Taxes.** Unless otherwise required by law, the JBE is exempt from federal excise taxes and no payment will be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The JBE shall only pay for any state or local sales, service, use, or similar taxes imposed on the Services rendered or equipment, parts or software supplied to the JBE pursuant to this Agreement.

APPENDIX C

General Provisions

- 1. Contractor Certification Clauses.** Contractor certifies to the JBEs that the following representations and warranties, which shall apply to this Agreement and any Participating Addendum, are true. Contractor shall cause its representations and warranties to remain true during the Term. Contractor shall promptly notify the JBEs if any representation and warranty becomes untrue. Contractor represents and warrants as follows:
 - 1.1 Authority.** Contractor has authority to enter into and perform its obligations under this Agreement and any Participating Addendum, and Contractor's signatory has authority to bind Contractor to this Agreement and any Participating Addendum.
 - 1.2 No Gratuities.** Contractor has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Judicial Branch Personnel with a view toward securing this Agreement (or any Participating Addendum) or securing favorable treatment with respect to any determinations concerning the performance of this Agreement (or any Participating Addendum).
 - 1.3 No Conflict of Interest.** Contractor has no interest that would constitute a conflict of interest under PCC sections 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.
 - 1.4 No Interference with Other Contracts.** To the best of Contractor's knowledge, this Agreement and any Participating Addendum does not create a material conflict of interest or default under any of Contractor's other contracts.
 - 1.5 No Litigation.** No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect Contractor's ability to perform its obligations.
 - 1.6 Compliance with Laws Generally.** Contractor complies with all laws, rules, and regulations applicable to Contractor's business and its obligations under this Agreement and any Participating Addendum. Contractor complies with all applicable privacy and data security laws, and other laws and regulations relating to the protection, collection, use, and distribution of personal information or Confidential Information.
 - 1.7 Drug Free Workplace.** Contractor provides a drug free workplace as required by California Government Code sections 8355 through 8357.
 - 1.8 No Harassment.** Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of this Agreement (and any Participating Addendum), and Contractor takes all reasonable steps to prevent harassment from occurring.

1.9 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. Insurance

2.1 Basic Coverage. Contractor shall provide to each JBE and maintain at the Contractor’s expense the following insurance during the Term:

- 2.1.1 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.
- 2.1.2 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.
- 2.1.3 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.
- 2.1.4 Professional Liability.** This policy is required only if Contractor performs professional services under this Agreement. The policy must cover liability resulting from any act, error, or omission committed in Contractor’s performance of Services under this Agreement, at minimum limits of \$1,000,000 per occurrence and annual aggregate. If the policy is written on a “claims made” form, Contractor shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the termination and acceptance of all Services provided under this Agreement. The retroactive date or “prior acts inclusion date” of any such “claims made” policy must be no later than the date that activities commence pursuant to this Agreement.

- 3.1 Umbrella Policies.** Contractor may satisfy basic coverage limits through any combination of basic coverage and umbrella insurance.
- 3.2 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.
- 3.3 Deductibles and Self-Insured Retentions.** Contractor shall declare to each JBE all deductibles and self-insured retentions that exceed \$100,000 per occurrence. Any increases in deductibles or self-insured retentions that exceed \$100,000 per occurrence are subject to each JBE's approval. Deductibles and self-insured retentions do not limit Contractor's liability.
- 3.4 Additional Insured Endorsements.** Contractor's commercial general liability policy, automobile liability policy, and, if applicable, umbrella policy must be endorsed to name the following as additional insureds with respect to liabilities arising out of the performance of this Agreement: the Establishing JBE, the State of California, the Participating Entities, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees).
- 3.5 Certificates of Insurance.** Before Contractor begins performing Services, Contractor shall give the Establishing JBE (and on request, any Participating Entity) certificates of insurance attesting to the existence of coverage, and stating that the policies will not be canceled, terminated, or amended to reduce coverage without thirty (30) days' prior written notice to the Establishing JBE and any Participating Entity.
- 3.6 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.
- 3.7 Required Policy Provisions.** Each policy must provide, as follows: (i) the policy is primary and noncontributory with any insurance or self-insurance maintained by Judicial Branch Entities and Judicial Branch Personnel, and the basic coverage insurer waives any and all rights of subrogation against Judicial Branch Entities and Judicial Branch Personnel; (ii) the insurance applies separately to each insured against whom a claim is made or a lawsuit is brought, to the limits of the insurer's liability; and (iii) each insurer waives any right of recovery or subrogation it may have against the Establishing JBE, any Participating Entity, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees for loss or damage.
- 3.8 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.

3.9 Consequence of Lapse. If required insurance lapses during the Term, the JBEs are not required to process invoices after such lapse until Contractor provides evidence of reinstatement that is effective as of the lapse date.

- 4. Indemnity.** Contractor will defend (with counsel satisfactory to the JBE or its designee), indemnify and hold harmless the Judicial Branch Entities and the Judicial Branch Personnel against all claims, losses, and expenses, including attorneys' fees and costs, that arise out of or in connection with: (i) a latent or patent defect in any ; (ii) an act or omission of Contractor, its agents, employees, independent contractors, or subcontractors in the performance of this Agreement; (iii) a breach of a representation, warranty, or other provision of this Agreement or any Participating Addendum; and (iv) infringement of any trade secret, patent, copyright or other third party intellectual property. This indemnity applies regardless of the theory of liability on which a claim is made or a loss occurs. This indemnity will survive the expiration or termination of this Agreement or any Participating Addendum, and acceptance of any Services or Deliverables. Contractor shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement that would bind an indemnified party, without the affected JBE's prior written consent, which consent shall not be unreasonably withheld; and such JBE shall have the right, at its option and expense, to participate in the defense and/or settlement of a claim through counsel of its own choosing. Contractor's duties of indemnification exclude indemnifying a party for that portion of losses and expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party.
- 5. Option Term.** The Establishing JBE may, at its sole option, extend this Agreement for up to two consecutive one-year terms, at the end of which Option Terms this Agreement shall expire. In order to exercise an Option Term, the Establishing JBE must send Notice to Contractor at least thirty (30) days prior to the end of the Initial Term (or the then-current Option Term).

6. Termination

6.1 Termination for Convenience. The Establishing JBE may terminate, in whole or in part, this Agreement (and a JBE may terminate, in whole or in part, a Participating Addendum) for convenience upon thirty (30) days prior Notice. After receipt of such Notice, and except as otherwise directed by the Establishing JBE (and regarding a Participating Addendum, except as otherwise directed by the JBE), Contractor shall immediately: (a) stop Services (or development of Deliverables) as specified in the Notice; and (b) stop the delivery or manufacture of as specified in the Notice.

6.2 Termination for Cause. The Establishing JBE may terminate this Agreement, in whole or in part, immediately "for cause" (and a JBE may terminate a Participating Addendum, in whole or in part, immediately "for cause"): if (i) Contractor fails or is unable to meet or perform any of its duties under this Agreement or a Participating Addendum, and this failure is not cured within ten (10) days following Notice of default (or in the opinion of the JBE, is not capable of being cured within this cure period); (ii) Contractor or Contractor's creditors file a petition as to Contractor's bankruptcy or insolvency, or Contractor is declared bankrupt, becomes insolvent,

makes an assignment for the benefit of creditors, goes into liquidation or receivership, or otherwise loses legal control of its business; or (iii) Contractor makes or has made under this Agreement (or any Participating Addendum) any representation, warranty, or certification that is or was incorrect, inaccurate, or misleading.

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. Each JBE's payment obligations are subject to annual appropriation and the availability of funds. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of this Agreement or Participating Addendum. Funding beyond the current appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement (including a Participating Addendum). The Establishing JBE may terminate this Agreement (and any JBE may terminate a Participating Addendum), and each JBE may limit Contractor's Work (and reduce proportionately Contractor's fees) upon Notice to Contractor without prejudice to any right or remedy of the JBEs if: (i) expected or actual funding to compensate Contractor is withdrawn, reduced or limited; or (ii) the Establishing JBE determines that Contractor's performance under this Agreement (or a JBE determines that Contractor's performance under a Participating Addendum) has become infeasible due to changes in applicable laws.

6.5 Rights and Remedies.

Participating Addendum. The termination of this Agreement shall not result in the termination of any outstanding Participating Addendum that has not been terminated by a JBE, and this Agreement shall continue to apply to any such Participating Addendum until such time as all Work under such Participating Addendum has been completed by its terms or is terminated as provided in this Section 7; provided, however, that the term of such Participating Addendum may not exceed the expiration date of this Agreement. Issuance and acknowledgement of any Participating Addendum (as evidenced by the JBE's and Contractor's signature on the Participating Addendum) must be completed before the termination or expiration of this Agreement.

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

7. Assignment and Subcontracting. Contractor may not assign or subcontract its rights or duties under this Agreement (including any Participating Addendum), in whole or in part, whether by operation of law or otherwise, without the prior written consent of the Establishing JBE. Consent may be withheld for any reason or no reason. Any assignment or subcontract made in contravention of the foregoing shall be void and of no effect. Subject to

the foregoing, this Agreement will be binding on the parties and their permitted successors and assigns.

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

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

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

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

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

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

10. Miscellaneous Provisions.

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

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

10.3 Audit. Contractor must allow the JBEs or their designees to review and audit Contractor's (and any subcontractors') documents and records relating to this Agreement (including any Participating Addendum), and Contractor (and its

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

10.4 Licenses and Permits. Contractor shall obtain and keep current all necessary licenses, approvals, permits and authorizations required by applicable law for the performance of the Services (including Deliverables) or the delivery of the . 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.

10.5 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 JBE'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 and any Participating Addendum. Contractor will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Contractor protects its own confidential or proprietary information of a similar nature, and with no less than the greater of reasonable care and industry-standard care. Each JBE owns all right, title and interest in its Confidential Information. Contractor will notify the affected JBE promptly upon learning of any unauthorized disclosure or use of Confidential Information and will cooperate fully with the JBE to protect such Confidential Information. Upon a JBE's request and upon any termination or expiration of this Agreement or a Participating Addendum, Contractor will promptly (a)) return to the JBE or, if so directed by the JBE, destroy all such JBE's Confidential Information (in every form and medium), and (b) certify to the JBE in writing that Contractor has fully complied with the foregoing obligations. Contractor acknowledges that there can be no adequate remedy at law for any breach of Contractor's obligations under this section, that any such breach will likely result in irreparable harm, and that upon any breach or threatened breach of the confidentiality obligations, the JBEs shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.

10.6 Ownership of Deliverables. Unless otherwise agreed in this Agreement, regarding any Deliverables or any other work product to be provided to a JBE, Contractor hereby

assigns to such JBE all rights, title, and interest (and all intellectual property rights, including but not limited to copyrights) in and to such Deliverables and work product, any partially-completed Deliverables, and related materials. Contractor agrees not to assert any rights at common law, or in equity, or establish a copyright claim in any of these materials. Contractor shall not publish or reproduce any Deliverable or other work product in whole or part, in any manner or form, or authorize others to do so, without the written consent of the JBE.

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

10.8 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.

10.9 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 Establishing JBE.

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

10.11 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.

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

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

APPENDIX D

Defined Terms

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

“Agreement” is defined on the Coversheet.

“Contractor” is defined on the Coversheet.

“Confidential Information” means: (i) any information related to the business or operations of each JBE, including information relating to its personnel and users; and (ii) all financial, statistical, personal, technical and other data and information of each JBE (and proprietary information of third parties provided to Contractor) which is designated confidential or proprietary, or that Contractor otherwise knows, or would reasonably be expected to know, is confidential. Confidential Information does not include information that Contractor demonstrates to the JBEs’ satisfaction that: (a) Contractor lawfully knew prior to the JBE’s first disclosure to Contractor, (b) a third party rightfully disclosed to Contractor free of any confidentiality duties or obligations, or (c) is, or through no fault of Contractor has become, generally available to the public.

“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” means the contract amount of any Participating Addendum.

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

“Deliverables” is defined in Appendix A.

“Effective Date” is defined on the Coversheet.

“Establishing JBE” is defined on the Coversheet.

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

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

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

“Judicial Branch Entity” or **“Judicial Branch Entities”** means the Establishing JBE and “Nearby Courts”.

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

“Nearby Courts” is defined in Appendix A.

“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 Establishing JBE.

“Participating Addendum” is defined in Appendix A.

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

“PCC” refers to the California Public Contract Code.

“Services” is defined in Appendix A.

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

APPENDIX E

Participating Addendum

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

[Instructions to the JBE establishing the Master Agreement: add provisions as appropriate, and in accordance with the terms of the Master Agreement. For example:

- *Options for ordering, including description of the Services and/or Deliverables.*
- *Options for: service levels, quantity, model #s, delivery dates, pricing, etc.*
- *Identify applicable types of evaluations to be performed.*

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

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

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

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

[JBE]

[CONTRACTOR]

By: _____

By: _____

Name:

Name:

Title:

Title:

APPENDIX F

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

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

CERTIFICATIONS:

1. Contractor is in compliance with the Unruh Civil Rights Act (Section 51 of the Civil Code);
2. Contractor is in compliance with the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of the Title 2 of the Government Code); **and**
3. Contractor does not have any policy against any sovereign nation or peoples recognized by the government of the United States, including, but not limited to, the nation and people of Israel, that is used to discriminate in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code).

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

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