

AGREEMENT NUMBER <b>1033954</b>
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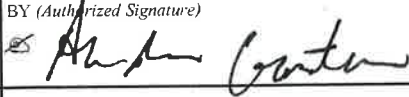
- In this agreement ("Agreement"), the term "Contractor" refers to **Matthew Bender & Company**, a member of LexisNexis Group and the terms "JBE" and "State" refer to the **Supreme Court of California**.
- This Agreement is effective as of **July 1, 2017** ("Effective Date") and expires on **June 30, 2019** ("Expiration Date"). This Agreement includes one or more options to extend through **June 30, 2024**.
- The purpose or title of this Agreement is: **to provide publication services of the Official Reports for the Supreme Court of California**.

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

- 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 – Goods and Services
- Appendix B – Payment Provisions
- Appendix C – General Provisions
- Appendix D – Defined Terms

**This agreement may be signed in any number of counterparts. Each counterpart is an original. Together, all counterparts form one single document. To facilitate execution, there are six (6) duplicate originals of this Agreement. In accordance with California Government Code section 68903, each original has been signed by the requisite contracting parties to the Agreement.**

JBE'S SIGNATURE	CONTRACTOR'S SIGNATURE
The Supreme Court of California	LexisNexis
BY (Authorized Signature) 	BY (Authorized Signature) 
NAME AND TITLE OF PERSON SIGNING <b>The Honorable Tani Cantil-Sakauye, Chief Justice</b>	PRINTED NAME AND TITLE OF PERSON SIGNING <b>Anders Ganten, Sr. Director Gov't Content</b>
DATE EXECUTED <b>6/21/17</b>	DATE EXECUTED <b>06.09.2017</b>
ADDRESS Supreme Court of California 350 McAllister St San Francisco, CA 94102	ADDRESS LexisNexis 701 E. Water St. Charlottesville, VA 22902

## APPENDIX A

### Goods and Services

#### 1. Background and Purpose.

- 1.1** The Supreme Court of California (the “Court” or “JBE”) was established in 1849, and is authorized by the California Constitution as the court of last resort in the courts of the State of California (“State”). It is headquartered in San Francisco and its decisions are binding on all other California state courts. The Judicial Council of California (“JCC”) is the policymaking body of the California Courts: the State Bar of California is the administrative arm of the California Supreme Court.
- 1.2** California Constitution, article VI, section 14 states that “[t]he Legislature shall provide for the prompt publication of such opinions of the Supreme Court and courts of appeal (“Official Reports”) as the Supreme Court deems appropriate, and those opinions shall be available for publication by any person.” The Legislature has so provided in Government Code sections 68902-68905. The focus of the contract process is section 68904, which provides that “[t]he contract shall be entered into . . . for a period of not less than two nor more than seven years on the terms most advantageous to the state and to the public.”
- 1.3** Government Code section 68903 designates the contracting parties for the Official Reports publication contract as the Chief Justice of California, the Secretary of State, the Attorney General, the President of the State Bar, and the Reporter of Decisions, who also serves as secretary for the contract.

#### 2. Goods

- 2.1 Description of Goods.** The JBE shall receive from Contractor, and Contractor shall send to the JBE the following products, goods, materials, and supplies (“Goods”) free and clear of all liens, claims, and encumbrances:
- The Contractor shall provide to the Supreme Court and Courts of Appeal up to 120 complimentary print version subscriptions to the Official Reports as well as up to 120 complimentary copies of the California Style Manual, Fifth Edition.
- 2.2 Risk of Loss; Title.** Contractor will deliver the Goods “Free on Board Destination Freight Prepaid”, to the JBE at Supreme Court of California, 350 McAllister St, San Francisco, CA 94102.
- 2.3 Goods Warranties.** Contractor warrants that the Goods will be merchantable for their intended purposes, free from all defects in materials and workmanship, in compliance with all applicable specifications and documentation, and to the extent not manufactured pursuant to detailed designs furnished by the JBE, free from defects in design. The JBE’s approval of designs or specifications furnished by Contractor shall not relieve Contractor of its obligations under this warranty.

#### 3. Services.

- 3.1 Description of Services.** Contractor shall perform the following services (“Services”):
- **Place of performance.** For all work performed in California under this contract, Contractor agrees to comply with all requirements of California law, including the California Fair Employment and Housing Act, and the Drug-Free Workplace Act of 1990, as those acts may from time to time be revised and amended. The Contractor shall perform the Services at the following locations:
    - Editorial Production:  
LexisNexis  
555 Middle Creek Parkway  
Colorado Springs, Colorado 80921

- The LexisNexis Colorado Springs office will continue to house the editorial production team for the Official Reports publications. Colorado Springs is a LexisNexis center of editorial excellence for case law and citations. Alternatively, under the disaster contingency plan, editorial work will be performed through telecommunication and electronic transmission of documents to members of the LexisNexis California Official Reports team working from their homes. Secondly, if any event or circumstance prevents telecommunication and electronic transmission of documents, the editorial work will shift to the LexisNexis Charlottesville, Virginia and Raleigh, North Carolina facilities.
- Print Production and Distribution:

Print production and initial distribution of the Bound Volumes and Advance Sheets of the Official Reports will continue to be outsourced to RR Donnelley. RR Donnelley was established in 1864 in Chicago, Illinois, and has developed a close, preferred-business partnership with LexisNexis. Donnelley is one of North America's oldest and leading providers for publishers. It is dedicated and focused on providing on-time quality and consistency for print products.
- Physical Location for Bound Volume production:

RR Donnelley, Willard Manufacturing Division  
1145 Conwell Ave.  
Willard, Ohio 44890

Physical Location for Advance Sheets production:  
RR Donnelley, San Diego Web Plant  
7590 Carroll Road  
San Diego, California 92121

The R.R. Donnelley Willard, Ohio, site and R.R. Donnelley San Diego, California, site each will be utilized as the alternative site for the other under the disaster contingency plan.
- Computer Version

The Official Reports on Lexis Advance will continue to be maintained from the LexisNexis Data Center at the LexisNexis Dayton, Ohio facility. The Data Center facility is one of the largest of its kind in the United States. The complex consists of networked servers, software and telecommunications equipment that are the backbone for a wide range of LexisNexis products and services. It serves LexisNexis customers with online services, data hosting, and back-up services. A second, remote data center and development facility is located in Springfield, Ohio. Each facility serves as a backup and disaster recovery facility for the other.
- Physical Location:

LexisNexis  
9443 Springboro Pike  
Dayton, Ohio 45342
- LexisNexis Computing and Research  
601 Benjamin Dr.  
Springfield, Ohio 45502
- Marketing

Marketing responsibility for the Official Reports will continue to be based in the LexisNexis Charlottesville, Virginia, site. The LexisNexis Dayton, Ohio, site is the designated alternative site for marketing under the Disaster Contingency Plan.

- Physical Location  
LexisNexis  
701 E. Water Street  
Charlottesville, Virginia 22902
- Contract Administration  
LexisNexis offers the Reporter of Decisions one point of contact for any contract related issues. The Government Content team located at the LexisNexis Charlottesville site will continue to handle the contract administration for the California Official Reports. The LexisNexis Dayton, Ohio, site is the designated alternative site for Government Content under the Disaster Contingency Plan.
- Physical Location:  
LexisNexis  
701 E. Water Street  
Charlottesville, Virginia 22902
- The LexisNexis Dayton, Ohio, site is the designated alternative site for Government Content Acquisition under the disaster contingency plan.
- **Copies of publications; online access.** For each Official Reports advance pamphlet and bound volume, the Contractor must provide the Reporter of Decisions, at the Contractor's expense, with up to twelve (12) copies. This material will be limited to the exclusive use of the Reporter of Decisions and staff, and the material will not be returned on termination of the Official Reports publication contract. The Contractor must also provide the Reporter of Decisions and staff, at the Contractor's expense, with access to any online research service, Web site, or other remote-access computer database that the Contractor makes commercially available. This access will be limited to the Reporter of Decisions and staff. For each edition of the California Style Manual produced, the Contractor must provide the Reporter of Decisions, at the Contractor's expense, with up to 12 copies. This material will be limited to the exclusive use of the Reporter of Decisions and staff, and the material will not be returned on termination of the Official Reports publication contract.
- **Transmittal of manuscript and other materials.** The Contractor must provide, at the Contractor's expense, for transmittal of manuscript, documents, and other materials required to fulfill editorial and manufacturing responsibilities described in this Agreement. In lieu of transmittal provisions for paper versions of manuscript, documents, and other materials, the Contractor may provide for transmittal via computer-based methods and procedures (e.g., e-mail, file transfer protocol, or other Internet-based methods), subject to the approval of the Reporter of Decisions for non-paper-based transmittal provisions. The Contractor's computer-based methods and procedures must be generally compatible with the computer systems and software used by the Reporter of Decisions. The Contractor's methods for transmittal must ensure receipt of manuscript, documents, and other materials within 24 hours after dispatch.
- **Inspections and meetings.** The Reporter of Decisions, on behalf of the State, must be given a continuing right to inspect, at reasonable intervals, all premises used in performance of editorial and manufacturing obligations described in this Agreement. The Contractor must provide for this right of inspection with any subcontractors. The Contractor will be responsible for all reasonable expenses relating to any meeting or inspection pertaining to the Official Reports, including the reasonable transportation, lodging, and related travel expenses of State personnel necessary to the purpose of any meeting or inspection. The Contractor shall not be reimbursed by the State for such expenses.
- **Disaster Contingency Plan.** The Contractor shall provide for an alternative plan or arrangement for continuing publication of the Official Reports should any event or circumstance (e.g., a natural disaster) cause a business interruption either for the Contractor or any subcontractor. Identification

of particular subcontractors that may be utilized if the plan is implemented is not required, but actual use of subcontractors will be subject to the requirements set out in the contract.

- **General publishing duty; Licensing and proprietary considerations; Material to be published.** Decisions of the Supreme Court will be reported in the continuation of California Reports, Fifth Series. Decisions of the Courts of Appeal will be reported in the continuation of California Appellate Reports, Fifth Series. Decisions of the Appellate Divisions of the Superior Court must be reported with the decisions of the Courts of Appeal, but in a category identified as the “California Supplement.” Decisions of the Commission on Judicial Performance must be reported with the decisions of the Supreme Court, but in a category identified as the “CJP Supplement.” The Contractor must publish in the Official Reports opinions and other material (e.g., court rules) only as directed by the Reporter of Decisions in accord with the California Rules of Court and publication practices of the Supreme Court.
- **Delivery of opinions and other material.** The Reporter of Decisions will deliver to the Contractor electronic versions of all opinions and other material required to fulfill the Contractor’s obligations under the Official Reports publication contract. Delivery of electronic versions of Supreme Court and Court of Appeal opinions will normally be made on the day opinions are filed, or on the date after filing on which opinions are certified for publication, by posting the opinions to the California judicial branch’s Web site ([www.courts.ca.gov/opinions](http://www.courts.ca.gov/opinions)). After the initial delivery of opinions and other material, transmittal of manuscript, documents, and other materials required to fulfill editorial and manufacturing responsibilities described in this Agreement.
- **Official Reports subscription lists.** The current publication contract obligates the incumbent Publisher “to provide copies to the State, or to a successor Publisher designated by the State, of all Official Reports subscription lists. The copies of subscription lists shall include all relevant information reasonably needed by a successor Publisher to fulfill subscription obligations. This includes, but is not limited to, the names and addresses of subscribers, types and categories of subscriptions for each subscriber, and subscription cost information.” The State will exercise reasonable diligence in enforcing the obligation to provide subscription lists, but the State assumes no responsibility for the accuracy or form of subscription list information provided by the incumbent Publisher, nor will the State be responsible for any failure by the incumbent Contractor to provide the information. The Contractor will, in turn, be obligated to provide copies to the State of all Official Reports subscription lists on termination of the Official Reports publication contract resulting from this Agreement. The copies of subscription lists must include all relevant information reasonably needed by a successor Contractor to fulfill subscription obligations for the print version of the Official Reports and any electronic version utilizing CD-ROM, DVD, or other offline media. The required information includes, but is not limited to, the names and addresses of subscribers, the type of subscription for each subscriber, and subscription cost information.
- **Marketing and advertising of Official Reports.** The Contractor must make extraordinary efforts to market and advertise the Official Reports during the term of the publication contract, including extraordinary efforts to increase subscription lists during the contract’s term. The Contractor shall include a marketing plan for the Official Reports, and changes to the marketing plan during the Official Reports publication contract will be subject to the reasonable approval of the Reporter of Decisions. The Contractor must report as periodically required by the Reporter of Decisions on current marketing and advertising efforts, and on the effectiveness of marketing and advertising efforts in general. Reports must include information as to the number of Official Reports subscribers for the print version, and correlative information for electronic versions of the Official Reports. These reports will be regarded by the State as confidential and will be provided only as necessary to justices of the California Supreme Court, Official Reports contracting parties, or an advisory committee convened on behalf of the contracting parties. If, at any time during the Official Reports publication contract, the Reporter of Decisions, on behalf of the State, determines that the Contractor’s marketing and advertising do not reflect good faith, fair dealing, and cooperation, the Contractor will be advised in writing and given a reasonable opportunity to correct any deficiencies before the contract is terminated by the State on that basis. No advertisements may be published in the bound volumes of the Official Reports. Advertising may, however, be published on the back

cover of the Official Reports advance pamphlets with advance written approval of the Reporter of Decisions.

- **Requirements and standards for editorial work; staffing and cost.** All editorial work specified in this Agreement will be done at the Contractor's expense. The Contractor must specify in detail the method and manner of performing editorial work specified in this Agreement. This information must include a description of the various functions to be performed and staffing plans, including the qualifications of staff. The Disaster Contingency Plan shall include at least one alternative manner of performing editorial work.
- **Cooperation with Reporter of Decisions.** The Contractor must cooperate with the Reporter of Decisions to the maximum extent reasonably possible in performing the editorial work described in this Agreement. Satisfactory performance of editorial responsibilities will require extraordinary diligence, initiative, and discretion by the Contractor's staff, and it will require extensive day-to-day communication with, and deference to, the Reporter of Decisions and staff. The Contractor's processes and procedures for performing editorial responsibilities must be compatible with processes and procedures of the Reporter of Decisions. If, at any time during the Official Reports publication contract, the Reporter of Decisions, on behalf of the State, determines that the Contractor's editorial work is unsatisfactory, the Contractor will be advised in writing and given a reasonable opportunity to correct any deficiencies before the contract is terminated by the State on that basis.
- **Postfiling verification, correction, styling, and proofreading.** The Contractor must accurately report opinion text and make changes to text only as specified by this Agreement, or as otherwise directed by the Reporter of Decisions. The Contractor must identify and promptly refer to the Reporter of Decisions all discrepancies, anomalies, and inconsistencies in opinion text that are discernible from diligently performing editorial responsibilities described in this Agreement. The Contractor must provide for thorough proofreading, copyreading, and correction of all opinions as soon as practicable after delivery by the Reporter of Decisions. The proofreading and copyreading must be done at a level of timeliness and accuracy satisfactory to the Reporter of Decisions. The Contractor is required to verify the accuracy of all citations to authority in opinions. The Contractor is also required to verify the accuracy of all quotations of authority in opinions (e.g., other opinions, statutes, rules, law reviews, and treatises). All opinions must conform to style and standards as directed by the Reporter of Decisions. Style and standards are principally set forth in the California Style Manual, Fourth Edition. The Contractor's styling responsibilities include: (i) checking titles of opinions and designations of parties; (ii) checking and styling the counsel listing; (iii) checking and styling trial court information; (iv) checking and styling names of justices; (v) executing partial publication orders; (vi) executing orders of modification and clerical correction directives from the Reporter of Decisions; (vii) adding parallel case citations, where available, to the National Reporter System, state reports of other jurisdictions, specialized case reporters as specified or authorized by the Reporter of Decisions, and any other form of parallel citation (e.g., universal citations) specified or authorized by the Reporter of Decisions; (viii) creating opinion titles for citation purposes (i.e., "running head" titles); (ix) correctly styling all citations of authority in opinions; and, (x) correcting errors in spelling and grammar. In the course of verifying, correcting, styling, and preparing summaries and headnotes, all opinions must be diligently inspected by the Contractor for: (i) citation to unpublished and depublished opinions; (ii) citation of opinions in which review has been granted and depublishment ordered by the Supreme Court; (iii) any facial impropriety with respect to the certification of the opinion for publication or partial publication; and, (iv) in partially published opinions, references in concurring, dissenting, or concurring and dissenting opinions to the unpublished portion of the majority or lead opinion. All occurrences of the specified anomalies must be promptly referred to the Reporter of Decisions.
- **Summaries and headnotes.** Opinion summaries, headnotes, classification headings for headnotes, and related references must be added to all opinions reported in the Official Reports. All headnotes and summaries must have the style, format, and level of editorial quality reflected in volumes 55 through 61 of California Reports, Fourth Series, and volumes 243 through 247 of California Appellate Reports, Fourth Series. Headnotes for the California Reports, Fifth Series, and California Appellate Reports, Fifth Series, are classified to a former Contractor's digest of California

decisional law. The Contractor must state an intention to continue using the digest classification system described in this Agreement. To its headnotes, the Contractor must append references to such authorities as directed or approved by the Reporter of Decisions, but only in the amount and manner specified and approved by the Reporter of Decisions.

- **Post-publication revision and correction.** The text of opinions and all editorial enhancements to opinions (e.g., tables, summaries, and headnotes) are subject to inspection, revision, and correction by the Reporter of Decisions. This includes the editing described by rule 8.1105(f), California Rules of Court. Where errors of significance are detected after publication of Official Reports bound volumes, whether errors are caused by the Contractor, the appellate courts, or the Reporter of Decisions, the Contractor must, at the discretion of the Reporter of Decisions and at the Contractor's own expense, reprint and reissue the volume in its entirety. The Contractor must also promptly reflect such corrections in the electronic versions of the Official Reports.
- **Print version requirements; Pagination and size of volumes.** The Contractor must continue to utilize the system of uniform pagination reflected in the current publication of advance pamphlets and bound volumes for the California Reports, Fifth Series, and the California Appellate Reports, Fifth Series. This means that volume and page designations for opinions in the advance pamphlets are retained for the bound volumes, notwithstanding that some opinions in the advance pamphlets may be deleted from the bound volumes in accord with the California Rules of Court, publication practices of the Supreme Court, and directions from the Reporter of Decisions. The average number of actual opinion pages included in each Official Reports bound volume must be 1,150. The term "actual opinion pages" includes associated classification headings, summaries, and headnotes. Pagination of the advance pamphlets must be continuously monitored and adjusted by the Contractor to ensure that the specified average number of actual opinion pages per volume is satisfied over the course of each year of the contract. The Contractor must report the results of this monitoring and adjusting as requested by the Reporter of Decisions.
- **Advance pamphlets; review granted pamphlets; specifications.** The Contractor must publish advance reports of opinions of the California Supreme Court, Courts of Appeal, Appellate Divisions of the Superior Courts, and Commission on Judicial Performance in combined advance pamphlets entitled "Advance Sheets of the California Official Reports." Advance pamphlet material relating to the Supreme Court must appear in the first portion of the pamphlet. Matter relating to the Commission on Judicial Performance and other appellate courts must appear following the Supreme Court matter. Where opinions from two volumes of the California Reports, Fifth Series, and/or the California Appellate Reports, Fifth Series, are published in the same advance pamphlet, a distinguishing border must be printed on the outside of the pages of the opinions from the second volume to facilitate identification and ease of access. Pagination, typographical style, paper quality, paper weight, and binding for the Official Reports advance pamphlets must conform to 2016 advance pamphlets Nos. 1 to 35.
- **Contents of advance pamphlets.** Pages of the Official Reports advance pamphlets comprising Supreme Court material must contain: (i) title page; (ii) multivolume cumulative table of opinions; (iii) opinions of the Supreme Court with classification headings, summaries, and headnotes prepared by the Contractor; (iv) Supreme Court minutes; and, (v) opinions of the Commission on Judicial Performance with classification headings, summaries, and headnotes prepared by the Contractor; and (vi) other material that the Supreme Court or Reporter of Decisions may direct to be published, including additions or amendments to the California Rules of Court, local appellate court rules, appellate court internal operating policies and procedures, specified Supreme Court orders, and other policies, guidelines, standards, and rules. Pages of the Official Reports advance pamphlets comprising Court of Appeal material must contain: (i) title page; (ii) multivolume cumulative table of opinions; (iii) opinions of the Courts of Appeal and Appellate Divisions of the Superior Courts certified for publication in whole or in part, with classification headings, summaries, and headnotes prepared by the Contractor; (iv) cumulative subsequent history table and derivative tables; and, (v) such other materials as the Supreme Court or Reporter of Decisions may direct to be published.
- **Publication frequency.** Official Reports advance pamphlets must be published every 10 calendar days, unless otherwise agreed upon by the parties.

- **Lead-time requirements for advance pamphlets.** Unless otherwise directed by the Reporter of Decisions, the Contractor must promptly prepare and publish opinions in the order received. Opinions must be published with reasonable promptness after receipt. If the State determines that opinions are not being published with reasonable promptness, the Contractor will be notified and given a reasonable opportunity to publish opinions more promptly before the contract is terminated by the State on that basis. Publication will not, under any circumstances, be considered prompt if the Contractor persistently allows more than 25 judicial days to pass between receipt of the most recent opinion in an advance pamphlet and publication of that pamphlet.
- **Advance pamphlet printing and distribution; penalty.** The Contractor must specify where the Official Reports advance pamphlets will be printed. The Contractor must also describe the various manufacturing functions to be performed, including staffing arrangements, the facilities in which those functions will be performed, and the type and manufacturer of equipment to be used for the printing and binding of the pamphlets. Substantially all subscribers must receive Official Reports advance pamphlets within four days of the scheduled date of publication. Failure to publish and substantially complete distribution of Official Reports advance pamphlets to subscribers within five days of the scheduled date of publication will result in damages to the State and the public that would be difficult to accurately assess. Therefore, as liquidated damages, the Contractor must pay the State **\$15,000** on each occasion of late publication or distribution. A delay solely attributable to the United States Postal Service will not cause assessment of the penalty.
- **“Reprinting for tracking” pamphlets.** The Contractor must continue the current practice of reprinting for tracking. After the Supreme Court grants review, some published Court of Appeal opinions may be ordered depublished and are no longer regarded as published under rule 8.1105, California Rules of Court, but these opinions must nonetheless remain available in the Official Reports while review is pending. To accomplish this, two pamphlets are issued each year, the first in January to cumulate and reprint all opinions for which review was granted and depublishation ordered and remain pending as of December 31 of the prior year. The second pamphlet each year is issued in July. The July pamphlet cumulates and reprints only opinions in which review was granted and depublishation ordered between January and June of the current year. Each edition of the pamphlet contains explanatory information and tables as directed by the Reporter of Decisions. “Reprinting for tracking” pamphlets must be treated as part of the subscription for Official Reports advance pamphlets and not priced or billed as a separate component of the Official Reports.
- **Bound volume; general specifications.** Pagination, typographical style, paper quality, paper weight, and binding for bound volumes of the Official Reports must conform to volumes 55 through 61 of California Reports, Fourth Series, volume 1 of California Reports, Fifth Series, volumes 243 through 247 of California Appellate Reports, Fourth Series, and volume 1 California Appellate Reports, Fifth Series, unless otherwise agreed upon by the parties.
- **Contents of bound volumes.** Bound volumes for the California Reports, Fifth Series, must contain the following: (i) list of contents inside the front cover; (ii) title page; (iii) rosters of judges of the Supreme Court, Courts of Appeal, and Superior Courts; (iv) table of cases; (v) opinions of the Supreme Court with classification headings, summaries, headnotes, and subsequent history entries, if any; (vi) opinions of the Commission on Judicial Performance with classification headings, summaries, headnotes, and subsequent history entries, if any; (vii) memorials, if any; and, (viii) such other materials as the Supreme Court or the Reporter of Decisions may direct to be published. Bound volumes for the California Appellate Reports, Fifth Series, must contain the equivalent of all items specified in the preceding paragraph, except that the included opinions must be those of the Courts of Appeal and the Appellate Divisions of the Superior Courts, and the roster of judges shall contain the judges of the Courts of Appeal and the Appellate Divisions of the Superior Courts, unless otherwise agreed upon by the parties.
- **Lead-time requirements for bound volumes.** The Contractor must publish and deliver bound volumes of the Official Reports within 60 days after delivery of the final opinion page manuscript by the Reporter of Decisions. The term “opinion page manuscript” refers to (i) page proofs of opinions in the advance pamphlets that have been edited and corrected by the Reporter of Decisions,



or (ii) electronic files of opinions in the advance pamphlets that have been edited and corrected by the Reporter of Decisions.

- **Availability of back volumes; inventory requirements.** The Contractor must make available a sufficient number of copies of each bound volume of the Official Reports to supply all demands for six years from the date of publication of each volume. Volumes supplied pursuant to this requirement must be sold at prices no greater than the current applicable price authorized under the contract for publication of the Official Reports in effect at that time. The Contractor must make a reasonable effort to acquire the incumbent Contractor's Official Reports inventory and assume responsibility for selling volumes from that inventory that were published under prior Official Reports publication contracts.
- **California Style Manual, Fifth Edition.** The Contractor must assist the Reporter of Decisions in creation and production of the California Style Manual, Fifth Edition. Such assistance shall consist of all editorial, typographic, layout, and graphic design necessary to the production of an independent, separate print product. The California Style Manual, Fifth Edition, must be produced in both hard copy printed and electronic format. The format chosen must be able to support supplements and updates. Copyright to the California Style Manual, Fifth Edition, will be held by the State of California but the Contractor will be granted an exclusive perpetual license to publish and sell the California Style Manual, Fifth Edition, at the price agreed upon and in accordance with the price adjustment provisions set forth in this Agreement. The Contractor has discretion to propose editorial enhancements to or format for the California Style Manual, Fifth Edition, not specified above. The Contractor must print and make available for sale a sufficient number of copies of the California Style Manual, Fifth Edition, to supply all demands for 20 years from the date of publication. Volumes supplied pursuant to this requirement must be sold at prices no greater than the current applicable price authorized under the contract for publication of bound volumes of the Official Reports in effect at that time.
- **Requirements for electronic version of Official Reports.** The Contractor must propose at least one electronic version of the Official Reports that includes both retrospective coverage and coverage of all opinions filed during the term of the Official Reports publication contract. The term "electronic version of the Official Reports" is broadly defined to include any non-paper-based mode, method, or manner of delivering or providing access to opinions. This includes, but is not limited to, any computer-based data storage and retrieval technology, including an on-line commercial legal research service, or any other remote-access computer database. Retrospective coverage must include all opinions filed and reported in the Official Reports prior to the effective date of the Official Reports publication contract. This includes California Reports, Fifth Series, California Reports, Fourth Series, California Reports, Third Series, California Reports, Second Series, California Reports (first series), California Appellate Reports, Fifth Series, California Appellate Reports, Fourth Series, California Appellate Reports, Third Series, California Appellate Reports, Second Series, and California Appellate Reports (first series). Opinions filed and reported in the Official Reports subsequent to the effective date of the Official Reports publication contract must, with reasonable promptness, be made available in an electronic version. All editorial requirements and enhancements specified in this Agreement must also, with reasonable promptness, be reflected in an electronic version. If the State determines that an electronic version is not being provided with reasonable promptness, the Contractor must be advised and given a reasonable opportunity to provide electronic versions of opinions more promptly before the contract is terminated by the State on that basis. The Contractor must provide a sufficient method and manner for customer service and assistance, including technical support and assistance, for electronic versions of the Official Reports.
- **Public Access Official Reports Web site.** In addition to the electronic version, the Contractor must host a Web site of California opinions that will be available to the public at no charge and linked to the California Courts Web site. This Web site must include, as of the effective date of the Official Reports publication contract, the official text of opinions from volume 1, California Reports (1850-1851), and volume 1, California Appellate Reports (1905), through all opinions that have been published as final versions in the Official Reports bound volumes by that time. Opinions must thereafter be added to the Web site not later than the approximate time final versions of opinions

prepared for the Official Reports bound volumes are available. This Web site must have at least the same approximate functionality, authenticity of opinion text, and search/find utilities as the current Public Access Official Reports Web site (see “searchable opinions 1850-present” link on “opinions” page of [www.courts.ca.gov/opinions/](http://www.courts.ca.gov/opinions/)), but the Contractor is encouraged to propose enhancements and improvements to the content and functionality of the current Public Access Official Reports Web site. These enhancements and improvements should focus on including elements such as Official Reports pagination and headnotes for opinions made available on the Public Access Official Reports Web site. As set out in the Contractor’s proposal, within the first 12 months of this contract, the Contractor agrees to migrate the current Public Access Official Reports Web site from the [lexis.com](http://lexis.com) platform to the Lexis Advance platform and to implement the promised enhanced search capability and a Uniform Resource Identifier for each opinion.

- **Public Access Official Reports Web site “2.0”.** The State is also interested in enhancements to the Public Access Official Reports Web site. Among these potential enhancements are: Delivery of final versions of opinions in machine-readable form (i.e., XML or JSON) and affording the ability to download opinions in bulk, revision of terms and conditions for usage of the Public Access Official Reports Web site to conform to the Uniform Electronic Legal Material Act, inclusion of a Uniform Resource Identifier for each opinion, enhanced browse and search capability to include browsing by date range or by court.
- **Publication Pricing; Comprehensive statement of prices.** The Contractor shall make no distinction between public and private subscribers. Notwithstanding the annual adjustment, the Contractor shall sell the Official Reports, inclusive of shipping and handling and on an annual basis, at the following cost:
  - Full subscription including advance pamphlets, all bound volumes, and review granted opinions pamphlets: \$613.00
  - Advance sheets/pamphlets: \$395.00
  - Bound Volumes: \$26.50
  - California Style Manual, Fifth Edition: \$26.50
- **Price adjustment requirement.** Prices charged for the print version of the Official Reports will be subject to annual adjustment, upward or downward, in accord with price indexes published by the United States Department of Labor, Bureau of Labor Statistics, unless otherwise agreed upon by the parties. As set out in the Contractor’s proposal such price increases shall be limited to a maximum increase of 3.5%. No change in price may be made without prior written consent by the Reporter of Decisions on behalf of the State. All prices and adjustments to prices authorized by the terms of the Official Reports publication contract must be subject to all applicable federal economic stabilization laws, orders, and regulations. Sales taxes imposed by law during the course of the publication for the Official Reports must be added to any applicable price.
- **Discretion to charge lower prices.** The statement of prices, as subject to adjustments under this Agreement, will not prohibit the Contractor from voluntarily charging lower prices, nor does the statement of prices prohibit the Contractor from including the Official Reports in any cooperative purchasing plans or agreements with subscribers. The Official Reports may also be included in promotional discounts, discounts resulting from “bundling” the Official Reports with other products or services, and any other pricing concessions resulting in prices lower than those otherwise required by the statement of prices. If the Contractor voluntarily charges prices lower than those required by the statement of prices, as subject to adjustments under this Agreement, the Contractor must, in doing so, treat public sector subscribers at least as favorably as private sector subscribers in like circumstances.

**3.2 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.

- **Timeliness.** The Services were completed and the Deliverables were delivered on time.

- **Completeness.** The Services and Deliverables contained the materials and features required in the Agreement.
  - **Technical accuracy.** The Services and Deliverables are accurate as measured against commonly accepted standards (for example, a statistical formula, an industry standard, or de facto marketplace standard).
- 3.3 Project Managers.** The JBE's project manager is: **Lawrence Striley**. The 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: **Nikki Daugherty**. Subject to written approval by the JBE, Contractor may change its project manager without need for an amendment to this Agreement.
- 3.4 Service Warranties.** Contractor warrants that: (i) the Services will be rendered with promptness and diligence and will be executed in a workmanlike manner, in accordance with the practices and professional standards used in well-managed operations performing services similar to the Services; and (ii) Contractor will perform the Services in the most cost-effective manner consistent with the required level of quality and performance. Contractor warrants that each Deliverable will conform to and perform in accordance with the requirements of this Agreement and all applicable specifications and documentation. For each such Deliverable, the foregoing warranty shall commence for such Deliverable upon the JBE's acceptance of such Deliverable, and shall continue for a period of one (1) year following acceptance. In the event any Deliverable does not conform to the foregoing warranty, Contractor shall promptly correct all nonconformities to the satisfaction of the JBE.
- 3.5 Resources.** Contractor is responsible for providing any and all facilities, materials and resources (including personnel, equipment and software) necessary and appropriate for performance of the Services and to meet Contractor's obligations under this Agreement.
- 3.6 Commencement of Performance.** This Agreement is of no force and effect until signed by both parties and all JBE-required approvals are secured. Any commencement of performance prior to Agreement approval shall be at Contractor's own risk.
- 3.7 Stop Work Orders.**
- A.** The JBE may, at any time, by Notice to Contractor, require Contractor to stop all or any part of the Services for a period up to ninety (90) days after the Notice is delivered to Contractor, and for any further period to which the parties may agree ("Stop Work Order"). The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this provision. Upon receipt of the Stop Work Order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Services covered by the Stop Work Order during the period of stoppage. Within ninety (90) days after a Stop Work Order is delivered to Contractor, or within any extension of that period to which the parties shall have agreed, the JBE shall either (i) cancel the Stop Work Order; or (ii) terminate the Services covered by the Stop Work Order as provided for in this Agreement.
  - B.** If a Stop Work Order issued under this provision is canceled or the period of the Stop Work Order or any extension thereof expires, Contractor shall resume the performance of Services. The JBE shall make an equitable adjustment in the delivery schedule, the Contract Amount, or both, and the Agreement shall be modified, in writing, accordingly, if:
    - i. The Stop Work Order results in an increase in the time required for, or in Contractor's cost properly allocable to the performance of any part of this Agreement; and
    - ii. Contractor requests an equitable adjustment within thirty (30) days after the end of the period of stoppage; however, if the JBE decides the facts justify the action, the JBE may receive and act upon a proposal submitted at any time before final payment under this Agreement.
  - C.** The JBE shall not be liable to Contractor for loss of profits because of a Stop Work Order issued under this provision.
- 4. Acceptance or Rejection.** All Goods, Services, and Deliverables are subject to acceptance by the JBE. The JBE may reject any Goods, Services or Deliverables that (i) fail to meet applicable acceptance criteria, (ii) are

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

**ATTACHMENT 1  
ACCEPTANCE AND SIGNOFF FORM**

Description of Services or Deliverables provided by Contractor: \_\_\_\_\_

**Date submitted to the JBE:**\_\_\_\_\_

The Services or Deliverables are:

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please note level of satisfaction:

Poor  Fair  Good  Very Good  Excellent

Comments, if any:

\_\_\_\_\_  
\_\_\_\_\_

The Services or Deliverables listed above are accepted.

The Services or Deliverables listed above are rejected.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

END OF ATTACHMENT

## 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, if applicable. 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 which Contractor incurs.
2. **Compensation for Goods.** Contractor will invoice the following amounts for Goods that the JBE has accepted:
  - *This is a zero-dollar contract for the State.*
3. **Compensation for Services.**
  - 3.1 **Amount.** Contractor will invoice the following amounts for Services or Deliverables that the JBE has accepted:
    - *This is a zero-dollar contract for the State.*
  - 3.2 **Withholding.** When making a payment tied to the acceptance of Deliverables, if applicable, the JBE shall have the right to withhold fifteen percent (10%) of each such payment until the JBE accepts the final Deliverable.
  - 3.3 **No Advance Payment.** The JBE will not make any advance payment for Services.
4. **Expenses.** Except as set forth in this section, no expenses relating to the Goods, Services, and Deliverables shall be reimbursed by the JBE.
  - 4.1 **Allowable Expenses.** Contractor may submit for reimbursement, without mark-up, only the following categories of expense: **No expenses are allowable.**
5. **Invoicing and Payment**
  - 5.1 **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.
  - 5.2 **Payment.** The JBE will pay each correct, itemized invoice received from Contractor after acceptance of the applicable Goods, Services, or Deliverables, in accordance with the terms of this Agreement.

Notwithstanding any provision in this Agreement to the contrary, payments to Contractor are contingent upon the timely and satisfactory performance of Contractor's obligations under this Agreement.
  - 5.3 **No Implied Acceptance.** Payment does not imply acceptance of Contractor's invoice, Goods, 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.
6. **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. Provisions Applicable to Services

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

**1.2 Turnover.** Contractor shall endeavor to minimize turnover of personnel Contractor has assigned to perform Services.

#### 2. Contractor Certification Clauses. Contractor certifies that the following representations and warranties are true. Contractor shall cause its representations and warranties to remain true during the Term. Contractor shall promptly notify the JBE if any representation and warranty becomes untrue. Contractor represents and warrants as follows:

**2.1 Authority.** Contractor has authority to enter into and perform its obligations under this Agreement, and Contractor's signatory has authority to bind Contractor to this Agreement.

**2.2 Not an Expatriate Corporation.** Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC 10286.1, and is eligible to contract with the JBE.

**2.3 No Gratuities.** Contractor has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Judicial Branch Personnel with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.

**2.4 No Conflict of Interest.** Contractor has no interest that would constitute a conflict of interest under PCC 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.

**2.5 No Interference with Other Contracts.** To the best of Contractor's knowledge, this Agreement does not create a material conflict of interest or default under any of Contractor's other contracts.

**2.6 No Litigation.** No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect Contractor's ability to perform the Services.

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

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

**2.9 No Harassment.** Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of this Agreement, and Contractor takes all reasonable steps to prevent harassment from occurring.

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

**2.11 Nondiscrimination.** Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California's Fair Employment and Housing Act (Government Code sections 12990 et seq.) and associated regulations (Code of Regulations, title 2, sections 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin,

race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor will notify in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor's obligations of nondiscrimination.

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

### 3. Insurance

**3.1 Basic Coverage.** Contractor shall provide and maintain at the JBE's discretion and Contractor's expense the following insurance during the Term:

- A. Commercial General Liability.** The policy must be at least as broad as the Insurance Services Office (ISO) Commercial General Liability "occurrence" form, with coverage for liabilities arising out of premises, operations, independent Contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. The policy must provide limits of at least \$1,000,000 per occurrence and annual aggregate.
- B. Workers Compensation and Employer's Liability.** The policy is required only if Contractor has employees. The policy must include workers' compensation to meet minimum requirements of the California Labor Code, and it must provide coverage for employer's liability bodily injury at minimum limits of \$1,000,000 per accident or disease.
- C. 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.
- D. Bond.** Within five business days from the date the Official Reports publication contract is signed, the Contractor must, pursuant to Government Code section 68905, subdivision (d), furnish a bond, satisfactory to the State, in the penal sum of \$10,000 for the faithful performance of the contract. The bond must be filed in the Office of the Secretary of State of the State of California.

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

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

**3.4 Deductibles and Self-Insured Retentions.** Contractor shall declare to the 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 the JBE's approval. Deductibles and self-insured retentions do not limit Contractor's liability.

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

**3.6 Certificates of Insurance.** Before Contractor begins performing Services, Contractor shall give the JBE 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 JBE.

- 3.7 Qualifying Insurers.** For insurance to satisfy the requirements of this section, all required insurance must be issued by an insurer with an A.M. Best rating of A - or better that is approved to do business in the State of California.
- 3.8 Required Policy Provisions.** Each policy must provide, as follows: (i) the policy is primary and noncontributory with any insurance or self-insurance maintained by Judicial Branch Entities and Judicial Branch Personnel, and the basic coverage insurer waives any and all rights of subrogation against Judicial Branch Entities and Judicial Branch Personnel; (ii) the insurance applies separately to each insured against whom a claim is made or a lawsuit is brought, to the limits of the insurer's liability; and (iii) each insurer waives any right of recovery or subrogation it may have against the JBE, the State of California, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, Contractors, volunteers or employees for loss or damage.
- 3.9 Partnerships.** If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either (i) separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or (ii) joint insurance program with the association, partnership, or other joint business venture included as a named insured.
- 3.10 Consequence of Lapse.** If required insurance lapses during the Term, the JBE is not required to process invoices after such lapse until Contractor provides evidence of reinstatement that is effective as of the lapse date.
- 4. Indemnity.** Contractor will defend (with counsel satisfactory to the 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 Goods, (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, 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, and acceptance of any Goods, 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 which would bind an indemnified party, without the JBE's prior written consent, which consent shall not be unreasonably withheld; and the 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(s).** The JBE may extend this Agreement for a two-year extension exercisable at the sole option of the State, and an additional subsequent three-year extension also exercisable at the sole option of the State, for a total contract duration of seven years or less, at the end of which Option Terms, this Agreement shall expire. In order to exercise an Option Term, the JBE must send Notice to Contractor at least thirty (30) days prior to the end of the Initial Term (or the current Option Term).
- 6. Tax Delinquency.** Contractor must provide notice to the JBE immediately if Contractor has reason to believe it may be placed on either (i) the California Franchise Tax Board's list of 500 largest state income tax delinquencies, or (ii) the California Board of Equalization's list of 500 largest delinquent sales and use tax accounts. The JBE may terminate this Agreement immediately "for cause" pursuant to Section 7.2 below if (i) Contractor fails to provide the notice required above, or (ii) Contractor is included on either list mentioned above.
- 7. Termination**
- 7.1 Termination for Convenience.** The JBE may terminate, in whole or in part, this Agreement for convenience upon thirty (30) days prior Notice. After receipt of such Notice, and except as otherwise

directed by the JBE, Contractor shall immediately: (a) stop Services as specified in the Notice; and (b) stop the delivery or manufacture of Goods as specified in the Notice.

- 7.2 Termination for Cause.** The JBE may terminate this Agreement, in whole or in part, immediately “for cause” if (i) Contractor fails or is unable to meet or perform any of its duties under this Agreement, and this failure is not cured within ten (10) days following Notice of default (or in the opinion of the 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 any representation, warranty, or certification that is or was incorrect, inaccurate, or misleading.
- 7.3 Termination upon Death.** This entire Agreement will terminate immediately without further action of the parties upon the death of a natural person who is a party to this Agreement, or a general partner of a partnership that is a party to this Agreement.
- 7.4 Termination for Changes in Budget or Law.** The JBE’s payment obligations under this Agreement are subject to annual appropriation and the availability of funds. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of this Agreement. Funding beyond the current appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement. The JBE may terminate this Agreement or limit Contractor’s Services (and reduce proportionately Contractor’s fees) upon Notice to Contractor without prejudice to any right or remedy of the JBE if: (i) expected or actual funding to compensate Contractor is withdrawn, reduced or limited; or (ii) the JBE determines that Contractor’s performance under this Agreement has become infeasible due to changes in applicable laws.
- 7.5 Rights and Remedies of the JBE.**
- A. *Nonexclusive Remedies.*** All remedies provided in this Agreement may be exercised individually or in combination with any other available remedy. Contractor shall notify the JBE 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 JBE may do any of the following: (i) withhold all or any portion of a payment otherwise due to Contractor, and exercise any other rights of setoff as may be provided in this Agreement or any other agreement between a Judicial Branch Entity and Contractor; (ii) require Contractor to enter into nonbinding mediation; (iii) exercise, following Notice, the JBE’s right of early termination of this Agreement as provided herein; and (iv) seek any other remedy available at law or in equity.
  - B. *Replacement.*** If the JBE terminates this Agreement in whole or in part for cause, the JBE may acquire from third parties, under the terms and in the manner the JBE considers appropriate, goods or services equivalent to those terminated, and Contractor shall be liable to the JBE 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 JBE for such goods and services be excluded under this Agreement as indirect, incidental, special, exemplary, punitive or consequential damages of the JBE. Contractor shall continue any Services not terminated hereunder.
  - C. *Delivery of Materials.*** In the event of any expiration or termination of this Agreement, Contractor shall promptly provide the JBE with all originals and copies of the Deliverables, including any partially-completed Deliverables-related work product or materials, and any JBE-provided materials in its possession, custody, or control. In the event of any termination of this Agreement, the JBE shall not be liable to Contractor for compensation or damages incurred as a result of such termination; provided that if the JBE’s termination is not for cause, the JBE shall pay any fees due under this Agreement for Services performed or Deliverables completed and accepted as of the date of the JBE’s termination Notice.
- 7.6 Survival.** Termination or expiration of this Agreement shall not affect the rights and obligations of the parties which arose prior to any such termination or expiration (unless otherwise provided herein) and such rights and obligations shall survive any such termination or expiration. Rights and obligations which by their nature should survive shall remain in effect after termination or expiration of this

Agreement, including any section of this Agreement that states it shall survive such termination or expiration.

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

If to Contractor:	If to the JBE:
Nikki Daugherty Lexis Nexis 701 E Water Street Charlottesville, VA 22902	Lawrence Striley, Reporter of Decision 350 McAllister St San Francisco, CA 94102
<u>With a copy to:</u> Anders Ganten Lexis Nexis 701 E Water Street Charlottesville, VA 22902	<u>With a copy to:</u> Stephen Saddler, Contracts Manager 455 Golden Gate Ave. San Francisco, CA 94102-3688

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.

10. **Provisions Applicable to Certain Agreements.** The provisions in this section are *applicable only to the types of orders specified in the first sentence of each subsection*. If this Agreement is not of the type described in the first sentence of a subsection, then that subsection does not apply to the Agreement.

- 10.1 **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 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.
- 10.2 **Domestic Partners, Spouses, Gender, and Gender Identity Discrimination.** *If the Contract Amount is \$100,000 or more, this section is applicable.* Contractor is in compliance with, and throughout the Term will remain in compliance with: (i) PCC 10295.3 which places limitations on contracts with Contractors who discriminate in the provision of benefits on the basis of marital or domestic partner status; and (ii) PCC 10295.35, which places limitations on contracts with Contractors that discriminate in the provision of benefits on the basis of an employee’s or dependent’s actual or perceived gender identity.
- 10.3 **Child Support Compliance Act.** *If the Contract Amount is \$100,000 or more, this section is applicable.* Contractor recognizes the importance of child and family support obligations and fully complies with (and will continue to comply with during the Term) all applicable state and federal laws relating to child and family support enforcement, including disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq. Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- 10.4 **Priority Hiring.** *If the Contract Amount is over \$200,000 and this Agreement is for services (other than Consulting Services), this section is applicable.* Contractor shall give priority consideration in filling

vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with PCC 10353.

- 10.5 Iran Contracting Act.** *If the Contract Amount is \$1,000,000 or more and Contractor did not provide to JBE an Iran Contracting Act certification as part of the solicitation process, this section is applicable.* Contractor certifies either (i) it is not on the current list of persons engaged in investment activities in Iran (“Iran List”) created by the California Department of General Services pursuant to PCC 2203(b), and is not a financial institution extending \$20,000,000 or more in credit to another person, for forty-five (45) days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the Iran List, or (ii) it has received written permission from the JBE to enter into this Agreement pursuant to PCC 2203(c).
- 10.6 Loss Leader Prohibition.** *If this Agreement involves the purchase of goods, this section is applicable.* Contractor shall not sell or use any article or product as a “loss leader” as defined in Section 17030 of the Business and Professions Code.
- 10.7 Recycling.** *If this Agreement provides for the purchase or use of goods specified in PCC 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), this section is applicable with respect to those goods. Without limiting the foregoing, if this Agreement includes (i) document printing, (ii) parts cleaning, or (iii) janitorial and building maintenance services, this section is applicable.* Contractor shall use recycled products in the performance of this Agreement to the maximum extent doing so is economically feasible. Upon request, Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the PCC 12200, in such goods regardless of whether the goods meet the requirements of PCC 12209. With respect to printer or duplication cartridges that comply with the requirements of PCC 12156(e), the certification required by this subdivision shall specify that the cartridges so comply.
- 10.8 Sweatshop Labor.** *If this Agreement provides for the laundering of apparel, garments or corresponding accessories, or for furnishing equipment, materials, or supplies other than for public works, this section is applicable.* Contractor certifies that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the JBE under this Agreement have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations Web site located at [www.dir.ca.gov](http://www.dir.ca.gov), and PCC 6108. Contractor agrees to cooperate fully in providing reasonable access to Contractor’s records, documents, agents, and employees, and premises if reasonably required by authorized officials of the Department of Industrial Relations, or the Department of Justice to determine Contractor’s compliance with the requirements under this section and shall provide the same rights of access to the JBE.
- 10.9 Federal Funding Requirements.** *If this Agreement is funded in whole or in part by the federal government, this section is applicable.* It is mutually understood between the parties that this Agreement may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if this Agreement were executed after that determination was made. This Agreement is valid and enforceable only if sufficient funds are made available to the JBE by the United State Government for the fiscal year in which they are due and consistent with any stated programmatic purpose, and this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this Agreement in any manner. The parties mutually agree that if the Congress does not appropriate sufficient funds for any program under which this Agreement is intended to be paid, this Agreement shall be deemed amended without any further action of the parties to reflect any reduction in funds. The JBE may invalidate this Agreement under the termination for convenience or cancellation clause (providing for no more than thirty (30) days’ Notice of termination or cancellation), or amend this Agreement to reflect any reduction in funds.

- 10.10 DVBE Commitment.** *This section is applicable if Contractor received a disabled veteran business enterprise (“DVBE”) incentive in connection with this Agreement.* Contractor’s failure to meet the DVBE commitment set forth in its bid or proposal constitutes a breach of the Agreement. If Contractor used DVBE subcontractor(s) in connection with this Agreement: (i) Contractor must use the DVBE subcontractors identified in its bid or proposal, unless the JBE approves in writing replacement by another DVBE subcontractor in accordance with the terms of this Agreement; and (ii) Contractor must within sixty (60) days of receiving final payment under this Agreement certify in a report to the JBE: (1) the total amount of money Contractor received under the Agreement; (2) the name and address of each DVBE subcontractor to which Contractor subcontracted work in connection with the Agreement; (3) the amount each DVBE subcontractor received from Contractor in connection with the Agreement; and (4) that all payments under the Agreement have been made to the applicable DVBE subcontractors. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.
- 10.11 Antitrust Claims.** *If this Agreement resulted from a competitive solicitation, this section is applicable.* Contractor shall assign to the JBE all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by Contractor for sale to the JBE. Such assignment shall be made and become effective at the time the JBE tenders final payment to Contractor. If the JBE receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the JBE any portion of the recovery, including treble damages, attributable to overcharges that were paid by Contractor but were not paid by the JBE as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Upon demand in writing by Contractor, the JBE shall, within one (1) year from such demand, reassign the cause of action assigned under this part if Contractor has been or may have been injured by the violation of law for which the cause of action arose and (a) the JBE has not been injured thereby, or (b) the JBE declines to file a court action for the cause of action.
- 10.12 Legal Services.** *If this Agreement is for legal services, this section is applicable.* Contractor shall: (i) adhere to legal cost and billing guidelines designated by the JBE; (ii) adhere to litigation plans designated by the JBE, if applicable; (iii) adhere to case phasing of activities designated by the JBE, if applicable; (iv) submit and adhere to legal budgets as designated by the JBE; (v) maintain legal malpractice insurance in an amount not less than the amount designated by the JBE; and (vi) submit to legal bill audits and law firm audits if so requested by the JBE, whether conducted by employees or designees of the JBE or by any legal cost-control provider retained by the JBE for that purpose. Contractor may be required to submit to a legal cost and utilization review as determined by the JBE. If (a) the Contract Amount is greater than \$50,000, (b) the legal services are not the legal representation of low- or middle-income persons, in either civil, criminal, or administrative matters, and (c) the legal services are to be performed within California, then Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services, or an equivalent amount of financial contributions to qualified legal services projects and support centers, as defined in section 6213 of the Business and Professions Code, during each year of the Agreement equal to the lesser of either (A) thirty (30) multiplied by the number of full time attorneys in the firm’s offices in California, with the number of hours prorated on an actual day basis for any period of less than a full year or (B) the number of hours equal to ten percent (10%) of the Contract Amount divided by the average billing rate of the firm. Failure to make a good faith effort may be cause for nonrenewal of this Agreement or another judicial branch or other state contract for legal services, and may be taken into account when determining the award of future contracts with a Judicial Branch Entity for legal services.
- 10.13 Good Standing.** *If Contractor is a corporation, limited liability company, or limited partnership, and this Agreement is performed in whole or in part in California, this section is applicable.* Contractor is, and will remain for the Term, qualified to do business and in good standing in California.

- 10.14 Equipment Purchases.** *If this Agreement includes the purchase of equipment, this section is applicable.* The JBE may, at its option, repair any damaged or replace any lost or stolen items and deduct the cost thereof from Contractor's invoice to the JBE, or require Contractor to repair or replace any damaged, lost, or stolen equipment to the satisfaction of the JBE at no expense to the JBE. If a theft occurs, Contractor must file a police report immediately.
- 10.15 Four-Digit Date Compliance.** *If this Agreement includes the purchase of systems, software, or instrumentation with imbedded chips, this section is applicable.* Contractor represents and warrants that it will provide only Four-Digit Date Compliant deliverables and services to the JBE. "Four-Digit Date Compliant" deliverables and services can accurately process, calculate, compare, and sequence date data, including date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Agreement and does not limit the generality of warranty obligations set forth elsewhere in this Agreement.
- 10.16 Janitorial Services or Building Maintenance Services.** *If this Agreement is for janitorial or building maintenance services, this section is applicable.* If this Agreement requires Contractor to perform Services at a new site, Contractor shall retain for sixty (60) days all employees currently employed at that site by any previous Contractor that performed the same services at the site. Contractor shall provide upon request information sufficient to identify employees providing janitorial or building maintenance services at each site and to make the necessary notifications required under Labor Code section 1060 et seq.
- 10.17 Small Business Preference Commitment.** *This section is applicable if Contractor received a small business preference in connection with this Agreement.* Contractor's failure to meet the small business commitment set forth in its bid or proposal constitutes a breach of this Agreement. Contractor must within sixty (60) days of receiving final payment under this Agreement report to the JBE the actual percentage of small/micro business participation that was achieved. If Contractor is a nonprofit veteran service agency ("NVSA"), Contractor must employ veterans receiving services from the NVSA for not less than 75 percent of the person-hours of direct labor required for the production of goods and the provision of services performed pursuant to this Agreement.

## 11. Miscellaneous Provisions.

- 11.1 Independent Contractor.** Contractor is an independent Contractor to the JBE. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor and the JBE. Contractor has no authority to bind or incur any obligation on behalf of the JBE. If any governmental entity concludes that Contractor is not an independent Contractor, the JBE may terminate this Agreement immediately upon Notice.
- 11.2 GAAP Compliance.** Contractor maintains an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles.
- 11.3 Audit.** Contractor must allow the JBE or its designees to review and audit Contractor's (and any subcontractors') documents and records relating to this Agreement, and Contractor (and its subcontractors) shall retain such documents and records for a period of four (4) years following final payment under this Agreement. If an audit determines that Contractor (or any subcontractor) is not in compliance with this Agreement, Contractor shall correct errors and deficiencies by the twentieth (20th) day of the month following the review or audit. If an audit determines that Contractor has overcharged the 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 is subject to examinations and audit by the State Auditor for a period three (3) years after final payment.
- 11.4 Licenses and Permits.** Contractor shall obtain and keep current all necessary licenses, approvals, permits and authorizations required by applicable law for the performance of the Services or the delivery of the Goods. Contractor will be responsible for all fees and taxes associated with obtaining such licenses, approvals, permits and authorizations, and for any fines and penalties arising from its noncompliance with any applicable law.
- 11.5 Confidential Information.** During the Term and at all times thereafter, Contractor will: (a) hold all Confidential Information in strict trust and confidence, (b) refrain from using or permitting others to use

Confidential Information in any manner or for any purpose not expressly permitted by this Agreement, and (c) refrain from disclosing or permitting others to disclose any Confidential Information to any third party without obtaining the 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. Contractor will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Contractor protects its own confidential or proprietary information of a similar nature, and with no less than the greater of reasonable care and industry-standard care. The JBE owns all right, title and interest in the Confidential Information. Contractor will notify the 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 the JBE's request and upon any termination or expiration of this Agreement, Contractor will promptly (a) return to the JBE or, if so directed by the JBE, destroy all 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 JBE shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.

**11.6 Ownership of Deliverables.** Unless otherwise agreed in this Agreement, Contractor hereby assigns to the JBE ownership of all Deliverables, any partially-completed Deliverables, and related work product or 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 in whole or part, in any manner or form, or authorize others to do so, without the written consent of the JBE.

**A. Intellectual property rights; copyright and licenses.**

- (1) Opinion summaries, headnotes, classification headings for headnotes, and related references and statements prepared by the Contractor for the Official Reports may be copyrighted by the Contractor. If the Contractor declines to register a copyright on its own behalf, the Contractor must register a copyright on behalf of the California Supreme Court. All expenses of obtaining copyright, either on behalf of the Contractor or the California Supreme Court, will be the responsibility of the Contractor, and copies of all documents pertaining to copyright must be provided to the Reporter of Decisions.
- (2) No copyright or other proprietary right may be procured or claimed by the Contractor for the text of any opinion reported in the Official Reports.
- (3) No copyright or other proprietary right may be procured or claimed by the Contractor with respect to any element of any citation for any opinion reported in the Official Reports. This includes any method of intra-opinion designation (i.e., "point page" references). All elements of all Official Reports citations for California Reports (first series), California Reports, Second Series, California Reports, Third Series, California Reports, Fourth Series, California Reports, Fifth Series, California Appellate Reports (first series), California Appellate Reports, Second Series, California Appellate Reports, Third Series, California Appellate Reports, Fourth Series, and California Appellate Reports, Fifth Series, are in the public domain.
- (4) The State will grant the Contractor a royalty-free license during the term of the publication contract for use of all intellectual property rights, including copyright, held by the incumbent Contractor on opinion summaries, headnotes, classification headings for headnotes, and related references and statements in California Reports (first series), California Reports, Second Series, California Reports, Third Series, California Reports, Fourth Series, California Reports, Fifth Series, California Appellate Reports (first series), California Appellate Reports, Second Series, California Appellate Reports, Third Series, California Appellate Reports, Fourth Series, and California Appellate Reports, Fifth Series.

- (5) The State's offer to grant the license described in subparagraph (4) is based on section XI of the final judgment entered by the United States District Court for the District of Columbia on March 7, 1997, in *United States et al., v. Thomson Corporation et al.* (Civil No. 96-1415 [PLF]). Section XI provides for transfer to the State of a "license, which shall be perpetual in term, sublicensable, assignable, and royalty-free, to the use of any intellectual property rights which [the incumbent Contractor] holds pertaining to the headnotes, case notes, and/or case summaries in the product(s) at issue." Exhibit A.3 of the final judgment defines the Official Reports as among the "product(s) at issue." The license was conditioned on exercising an option provided by the final judgment to terminate the Official Reports publication contract in effect at that time, and that option was exercised.
- (6) The Contractor must grant the State a royalty-free, perpetual license, which will be sublicensable and assignable, for use of all intellectual property rights, including copyright, on opinion summaries, headnotes, classification headings for headnotes, and related references and statements created during the term of this Agreement.
- (7) If the State terminates the Official Reports publication contract, both the State and any successor Contractor of the Official Reports must be held harmless for any infringement of the Contractor's intellectual property rights in the Official Reports, including copyright, relating to any sublicense or assignment of those rights made by the State in good faith to facilitate continued publication and availability of the Official Reports. The State and any successor Contractor must be held harmless even if the termination of the contract by the State is ultimately found to be without cause.
- (8) Contractor shall perform its obligations under this Agreement in a manner that the Work (including each Deliverable) and any portion thereof, does not infringe, or constitute an infringement, misappropriation or violation of, any Intellectual Property Right.

**B. Third-Party Rights.** The Contractor hereby assigns to the State all of the Contractor's licenses and other rights (including any representations, warranties, or indemnities that inure to the Contractor from third parties) to all Third Party Materials incorporated into the Work. If such licenses and rights cannot be validly assigned to or passed through to the State by the Contractor without a Third Party's consent, then the Contractor will use its best efforts to obtain such consent (at Contractor's expense) and will indemnify and hold harmless the State against all Claims arising from the Contractor's failure to obtain such consent.

- 11.7 Publicity.** Contractor shall not make any public announcement or press release about this Agreement without the prior written approval of the JBE.
- 11.8 Choice of Law and Jurisdiction.** California law, without regard to its choice-of-law provisions, governs this Agreement. The parties shall attempt in good faith to resolve informally and promptly any dispute that arises under this Agreement. Jurisdiction for any legal action arising from this Agreement shall exclusively reside in state or federal courts located in California, and the parties hereby consent to the jurisdiction of such courts.
- 11.9 Negotiated Agreement.** This Agreement has been arrived at through negotiation between the parties. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code section 1654.
- 11.10 Amendment and Waiver.** Except as otherwise specified in this Agreement, no amendment or change to this Agreement will be effective unless expressly agreed in writing by a duly authorized officer of the JBE. A waiver of enforcement of any of this Agreement's terms or conditions by the JBE is effective only if expressly agreed in writing by a duly authorized officer of the JBE. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
- 11.11 Force Majeure.** Neither party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by a force majeure. Force majeure, for purposes of this paragraph, is defined as follows: acts of war and acts of god, such as earthquakes, floods, and other natural disasters, such that performance is impossible.



- 11.12 Follow-On Contracting.** No person, firm, or subsidiary who has been awarded a Consulting Services agreement may submit a bid for, nor be awarded an agreement for, the providing of services, procuring goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of this Agreement.
- 11.13 Severability.** If any part of this Agreement is held unenforceable, all other parts remain enforceable.
- 11.14 Headings; Interpretation.** All headings are for reference purposes only and do not affect the interpretation of this Agreement. The word “including” means “including, without limitation.” Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days.
- 11.15 Time of the Essence.** Time is of the essence in Contractor’s performance under this Agreement.
- 11.16 Counterparts.** This Agreement may be executed in counterparts, each of which is considered an original.
- 11.17 Constitutional provisions, statutes, and rules; style manual.** California Constitution, article VI, section 14, Government Code sections 68902 through 68905, and California Rules of Court, rules 8.1100 through 8.1125, which govern this Agreement may from time to time be revised and amended. The California Style Manual, Fourth Edition, may be revised, supplemented, amended or replaced by a new edition from time to time.
- 11.18 Penalty for late publication of bound volumes.** Failure of the Contractor to publish the bound volumes within 75 days from the date the Reporter of Decisions transmits the opinion page manuscript will result in damages to the State and the public that would be difficult to accurately assess. Therefore, as liquidated damages, the Contractor must pay the State the amount of \$25,000 on each occasion of late publication.

## 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 the JBE, including information relating to the JBE’s personnel and users; and (ii) all financial, statistical, personal, technical and other data and information of the 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 JBE’s 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”** is defined on the Coversheet.

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

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

**“Effective Date”** is defined on the Coversheet.

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

**“Goods”** is defined in Appendix A.

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

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

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

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

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

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

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

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

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

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

“**Work**” includes but is not limited to editorial, manufacturing, marketing, sales, distribution, customer service, and any other operation or procedure necessary to perform the obligations specified in this Agreement.