**ATTACHMENT G**

**MASTER SERVICES AGREEMENT**

**The Master Services Agreement is the presiding document governing all future agreements adopted under this procurement.**

**Bidder must indicate if they accept the Master Services Agreement as is, or if the Bidders takes any exceptions/clarifications.**

*Mark the Appropriate Choice, below:*

[ ]  Bidder accepts the Master Services Agreement Contract included with this solicitation including all of its Terms and Conditions without exception.

**OR**

[ ]  Bidder proposes any exceptions/modifications to the Master Services Agreement.

*DIRECTIONS: If Bidder indicates the 2nd choice above, Bidder must provide a list and rationale for any and all exceptions to the Master Services Agreement. Bidder may either explain exceptions in the box below or attach a list of exceptions and rationale to their proposal.*

|  |
| --- |
| Click here to enter text. |

**CERTIFICATION OF ACCEPTANCE**

 Click here to enter text.

(Signature) (Email)

Click here to enter text. Click here to enter text.

 (Type or Print Name) (Phone)

Click here to enter text. Click here to enter text.

 (Title) (Name of Company)



**MASTER SERVICS AGREEMENT FOR AN**

**ONLINE BIDDING SYSTEM AND ANCILLARY SERVICES**

**BETWEEN**

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE**

**AND**

**NAME OF CONTRACTOR**

**MASTER SERVICES AGREEMENT #**

|  |  |
| --- | --- |
| Agreement NumberTBD | PO NumberTBD |
| TAXPAYER’S FEDERAL EMPLOYER IDENTIFICATION NUMBERTBD |

Superior Court of California, County of Orange

**MASTER SERVICES AGREEMENT**

This Master Services Agreement (“MSA”) is made between **Contractor Name, Contractor Address, State, Zip**, hereafter (“Contractor”) and the Superior Court of California, County of Orange, an entity of the State of California, hereafter (“Orange Court”).

**Background**

1. Orange Court and Participating Agencies have a need for an Online Bidding System and Ancillary Services.
2. Contractor submitted a proposal in response to the Orange Court’s Request for Proposals for Online Bidding System and Ancillary Services (RFP # 1310-002) issued by Orange Court on January 29, 2014.
3. Orange Court has elected to award an MSA to Contractor based on Contractor’s experience, expertise, and ability to meet the needs of the Court.

WITNESSETH: That the Contractor for and in consideration of the covenants, conditions, agreements, and stipulations of the Court hereinafter expressed, does agree to furnish to the Court services and materials as follows:

1. **Contract Documents.** Incorporated into this MSA herewith, and attached hereto, are the following documents (“Contract Documents”):

Exhibit A-1, General Terms and Conditions;

Exhibit A-2, Supplemental Terms and Conditions;

Exhibit B, Payment Provisions;

Exhibit C, Scope of Services;

Exhibit D, Sample Participation Agreement (attached to this RFP as Attachment H)

In the event of a conflict between the Contract Documents, the following descending order of precedence shall govern:

Exhibit D, Sample Participation Agreement (attached to this RFP as Attachment H)

MSA Exhibit A-1, General Terms and Conditions;

MSA Exhibit A-2, Supplemental Terms and Conditions;

MSA Exhibit B, Payment Provisions;

Exhibit C, Scope of Services;

1. **Term and Effective Date of Agreement.** Any Amendments, starting with the most recent, shall take precedence over the existing MSA. The Term of this MSA begins on **April 1, 2014**, the Effective Date, and concludes on **March 31, 2019**, the Expiration Date, unless otherwise terminated for any reason in accordance with such termination clause as specified in this MSA.

This MSA is of no force or effect until signed by both parties and Contractor shall not perform any of its obligations under this Agreement, until this MSA is fully executed. No guarantee is given as to any estimated usage amount.

1. **Signatures.**

IN WITNESS WHEREOF, this MSA has been entered into by the parties hereto, effective upon the Effective Date.

|  |  |
| --- | --- |
| **Superior Court of California, Orange County** | **Contractor Name** |
| Signature: | Signature: |
| Name:Alan Carlson  | Name: |
| Title:Chief Executive Officer  | Title: |
| Date: | Date: |

***End of Contract Cover Sheet***

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# EXHIBIT A: GENERAL TERMS AND CONDITIONS

## Master Services Agreement

### The purpose of this MSA is to set forth the terms and conditions that apply to Contractor’s provided services as outlined in RFP 1310-002 to Judicial Branch Entities (each a “JBE”) or other state agencies. This MSA does not of itself encumber funds, and Orange Court is not obligated to encumber funds as a result of entering into this MSA.

### This MSA does not obligate Orange Court, or any Participating Agency to issue orders under this MSA or guarantee that Contractor will receive a specific volume of business from Orange Court or any Participating Agency.

## Participation Agreement

### If a Participating Agency executes a Participation Agreement under this MSA, Contractor shall perform its Work for that Participating Agency in accordance with the terms of this MSA and the Participation Agreement.

### The terms included in this MSA are minimum terms that will be included in any Participation Agreement awarded by a Participating Agency to this Contractor under RFP 1310-002. To the extent of any conflict between this MSA and the terms of any mutually agreed upon Participation Agreement, the terms of the agreed upon Participation Agreement shall be controlling between the parties of that Participation Agreement only. Notwithstanding the foregoing, the terms and conditions of any Participation Agreement (between the parties of that Participation Agreement) shall be read to be complementary and supplementary to this MSA to the extent any terms or conditions are shared but are not in conflict. To the extent that any term or condition is not referenced or addressed in this MSA, the Participation Agreement shall control as it relates to the parties of that Participation Agreement.

### A sample Participation Agreement is attached as Exhibit D, although the form and substance of an actual Participation Agreement may vary with each Participating Agency. **No term in the Participation Agreement shall be construed as affecting an increase in the obligations of a Participating Agency, a decrease in the obligations of the Contractor, an increase in the amount of fees, or change in the distribution of fees provided for under this MSA and Applicable Law. Without invalidating a Participation Agreement, any provision in a Participation Agreement that is inconsistent with Applicable Law shall have no force or effect.** The bold and underlined text in this Section must be included in bold text at the beginning of each Participation Agreement.

### Each Participating Agency shall designate a contact person for each respective Participation Agreement(s) with Contractor. Contractor shall directly contact this person if Contractor has any questions or concerns about a Participation Agreement.

### Each Participating Agency will contract separately for their specific licenses, equipment, training, installation, implementation and onsite maintenance services and support pursuant to this MSA. A Participating Agency will place an order by issuing a Participation Agreement to Contractor. The form and format of the Participating Agency Participation Agreement may vary, depending on their respective needs. However, the general terms and conditions of this MSA is applicable to all such contracts, regardless of the form and format of the contract. In the event of a conflict or discrepancy between this MSA and a Participating Agency Participation Agreement, the terms and conditions of the Participation Agreement will control.

### Each Participating Agency will be responsible for the receipt and acceptance of all Services that the Participating Agency orders from Contractor and the Participating Agency will be responsible for payment pursuant to the terms and conditions set forth in this MSA. The Orange Court shall have no obligation or liability to Contractor for obligations of Participating Agency under any Participation Agreement and/or Purchase Orders.

### Each Participating Agency will include the name of the Participating Agency’s contact person in their Participation Agreement. Contractor must contact the Participating Agency Project Manager regarding questions on any contract issue or payment status.

### After a Participation Agreement has been issued to Contractor by a Participating Agency, Contractor must provide the Participating Agency with an immediate acknowledgement of the Participation Agreement. The acknowledgement must be submitted by mail and must include: the products and services order delivery, installation and testing dates (if such delivery, installation and testing dates are known at the time the order is placed) and Contractor contact information. Contractor understands and acknowledges that a Participating Agency member may not know the delivery, installation and testing dates at the time a Participation Agreement is placed. Contractor further understands and acknowledges that even if a Participation Agreement includes such dates, a change in circumstances beyond the reasonable control of the Participating Agency may require the Participating Agency to change the delivery, installation and/or testing dates at no extra cost to the Participating Agency member. The time and place of delivery, installation and testing must be acceptable to the Participating Agency.

## Usage

Orange Court does not guarantee any specific sales or usage amount from any Participation Agreements resulting from this MSA.

## Definitions.

### **Administrative Office of the Courts (AOC):** staff agency to the Judicial Council of California, the policy-making body of the California Court system.

### **Amendment:** written Contract Document issued by Orange Court or the Participating Agency, and signed by both Contractor and either Orange Court or the Participating Agency as applicable, modifying the Agreement and identifying any of the following: (1) change in the Work; (2) change in Contract Amount; (3) change in schedule for delivery and performance of Work; or (4) any change to other terms and conditions.

### **Applicable Law:** any applicable laws, codes, legislative acts, regulations, ordinances, rules, rules of court, and orders.

### **Appropriation Year:**  authorized period of time for government spending for a defined purpose. The Appropriation Year for state-funded agreements ends on June 30th of each year. The Appropriation Year for federally funded agreements ends on September 30th of each year.

### **Bid:** A response to a competitive solicitation issued by Orange Court, regardless of the Solicitation Document used by the Court (e.g., Request for Quote “RFQ”, Invitation for Bid “IFB”, or Request for Proposal “RFP”.

### **Business Day:** means days of the week excluding Saturday and Sunday, as well as Contractor’s pre-established and published holidays applicable to its employees.

### **Certificate of Insurance:** A document that provides evidence that an insurance policy has been underwritten and that includes a statement of the policy coverage.

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

### **Compensation:** all remuneration owed to Contractor in respect of Services, including Contractor’s professional fees, direct costs (including filing fees), indirect costs (including overhead expenses), profit, and taxes.

### **Confidential Information:** (i) any financial, statistical, personal, technical, or other data or information that is designated confidential by a party to this Agreement or any Participation Agreement resulting from this MSA, (ii) all information related to the business of the Participating Agency that may be obtained orally, in writing, or from any source, or on any Participating Agency’s mainframe, Part computer network or workstation, and all software, whether owned or licensed by Participating Agency and whether accessed by Contractor by direct or remote access method, (iii) any information relating to the methods, processes, financial data, lists, apparatus, statistics, programs, research, development, or related information of the Participating Agency concerning the past, present, or future official business and/or the results of the provision of services to the Participating Agency, and (iv) information relating to Participating Agency personnel and Participating Agency users. Confidential Information does not include: (i) information that is already known by the receiving party, free of obligation of confidentiality to the disclosing party; (ii) information generally and lawfully available to the public, other than as a result of disclosure by the receiving party in breach of this MSA or Participation Agreement; (iii) information independently developed by the receiving party without reference to the Confidential Information; and (iv) information that the receiving party rightfully obtains from a Third Party free of the obligation of confidentiality to the disclosing party.

### **Consulting Services:**  refers to the services performed under “Consulting Services Agreements”, which are defined in Public Contract Code Section 10335.5, substantially, as contracts that:

#### Are of an advisory nature;

#### Provide a recommended course of action or personal expertise;

#### Have an end product that is basically a transmittal, either written or oral, that is related to the governmental functions of the state agency administration and management and program management or innovation; and

#### Are obtained by awarding a contract, a grant, or any other payment of funds for services of the above type.

#### The end product may include anything from answers to specific questions to design of a system or plan, and includes workshops, seminars, retreats, and conferences for which paid expertise is retained by contract.

“Consulting Services Agreements” do not include:

#### Contracts between a state agency and the federal government; or

#### Contracts with local agencies, as defined in Revenue and Taxation Code, Section 2211, to subvene federal funds for which no matching state funds are required.

### **Contractor**: means the individual, association, partnership, firm, company, consultant, corporation, affiliates, or combination thereof, including joint ventures, contracting with the Participating Agency to do the Contract Work. Contractor is one (1) of the parties to this MSA or Participation Agreement(s) as defined on the Cover Sheet.

### **Contractor Key Personnel:** the Contractor Project Manager and those Project Staff members identified as “Key Personnel” as set forth in a Statement of Work.

### **Contractor Project Lead:** Contractor’s representative who will operate as the main interface with the Participating Agency regarding the Work to be performed under the Participation Agreement.

### **Contractor Project Manager:** the individual(s) appointed by the Contractor to communicate directly with the Participating Agency’s Project Manager.

### **Contractor Project Staff:** the personnel of Contractor and Subcontractors who provide the Services.

### **Contractor Service Location(s):** any location (except a Participating Agency Service Location) from which Contractor performs Services.

### **Contractor Works:** Works owned or developed prior to the provision of the Services, or developed by Contractor independently from the provision of the Services and without use of the Participating Agency Works or Confidential Information.

### **Coversheet**:refers to the first sheet of this Agreement.

### **Data**: information, including, but not limited to, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.

### **Day:** means calendar day

### **Defect:** any failure of any Deliverable to conform to and perform in accordance with the requirements of this Agreement and all applicable Specifications and Documentation.

### **Deliverable**: hardware, software, firmware, documentation, services or other items, specified in the Agreement, that Contractor shall complete and deliver or submit to Participating Agency.

### **Deliverable Basis:** means that the Services provided under to the Participating Agency by Contractor under this Agreement shall result in the provision of a Deliverable or Deliverables.

### **Developed Works:** Works created, made, or developed by Contractor or Subcontractors, either solely or jointly with the Participating Agency or its Contractors, in the course of the performance of the Services under this Agreement, and all Intellectual Property Rights therein and thereto, including, without limitation, (i) all work-in-progress, data or information, (ii) all modifications, enhancements and derivative works made to Contractor Works, and (iii) all Deliverables; provided, however, that Developed Works do not include Contractor Works.

### **Documentation:** all technical architecture documents, technical manuals, user manuals, flow diagrams, operations guides, file descriptions, training materials and other documentation related to the Deliverables; together with all Upgrades thereto.

### **DVBE:** is an acronym for Disabled Veterans Business Enterprise**.**

### **Effective Date:** has the meaning defined on the coversheet of this Agreement**.**

### **Expenses:** means and includes both Travel and Living Expenses and Reimbursable Expenses.

### **Expiration Date:** is the last day of the Term, unless the Initial Term is extended by exercise of an option. In that event, the Expiration Date will instead refer to the date specified as the expiration date in the notice of exercise of the option.

### **Intellectual Property Rights:** all past, present, and future rights of the following types, which may exist or be created under the laws of any jurisdiction in the world: (a) rights associated with works of authorships, including copyrights, moral rights, and mask work rights; (b) trademark and trade name rights and similar rights; (c) trade secret rights; (d) patent and industrial property rights; (e) other proprietary rights in intellectual property of every kind and nature; and (f) rights in or relating to registrations, renewals, extensions, combinations, divisions, and reissues of, and applications for, any of the rights referred to in clauses (a) through (e) of this sentence.

### **IT Infrastructure:** software and all computers and related equipment, including, as applicable, central processing units and other processors, controllers, modems, servers, communications and telecommunications equipment and other hardware and peripherals.

### **JBE:** is an acronym for “Judicial Branch Entity.”

### **Judicial Branch Contract Law (JBCL):** Part 2.5 of the Public Contract Code (“PCC”); PCC 19201-19210.

### **Judicial Branch Entity (JBE)**: refers to the Supreme Court, each Court of Appeal, each Superior Court, the Judicial Council, and the Administrative Office of the Courts and the Habeas Corpus Resource Center. These entities comprise the “Judicial Branch”.

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

### **Loss:** as used in the indemnity provisions of this Agreement includes any actions, claims, demands, causes of action, fines, penalties, losses, liabilities, damages, costs, expenses, and attorneys’ fees.

### **Master Services Agreement:** entire integrated agreement, including all Contract Documents, Exhibits, Attachments, and Amendments incorporated therein, signed by Orange Court and Contractor, for performance of the Work.

### **Material**: all types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication hardware and software.

### **Orange Court:** refers to Superior Court of California, County of Orange, and is the issuing agency for this RFP.

### **Option Period:** means the period, if any, through which this MSA may be extended upon mutual agreement.

### **Participation Agreement:** entire integrated agreement, including all Contract Documents, Exhibits, Attachments, and Amendments incorporated therein, signed by Participating Agency and Contractor, for performance of the Work.

### **Participating Agency:** Any state or local agency, or any JBE who enters into a Participation Agreement with the Contractor under this MSA.

### **Participating Agency Contractors:** the agents, subcontractors and other representatives of the Participating Agency, other than Contractor and Subcontractors.

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

### **Participating Agency Project Lead:** Participating Agency’s representative who will operate as the main interface with the Participating Agency regarding the Work to be performed under this Agreement.

### **Participating Agency Project Manager:** the individual(s) appointed by the Participating Agency to communicate directly with the Contractor Project Manager.

### **Participating Agency Service Locations:** any Participating Agency Facility, Justice Center, or Location at which Contractor performs Services.

### **Participating Agency Works:** Works owned, licensed, made, conceived, or reduced to practice by the Participating Agency or a Participating Agency Contractor, any Works developed or acquired separate from this Agreement, and all modifications, enhancements, derivative works, and Intellectual Property Rights in any of the foregoing.

### **Parties or Party:** means “us”, the Superior Court of California, County of Orange, Participating Agency or JBE, and/or “you”, the Contractor, as the context requires.

### **PCC:** is an acronym for “Public Contract Code”.

### **Progress Payment:** A partial payment following the completion of a deliverable, milestone, or stage of progress under a contract.

### **Proposal:** A response to a Request for Proposals that describes the offeror’s approach, scope of work, schedule and cost to provide goods or services, as well as the ability to meet other relevant criteria established by the Participating Agency.

### **Public Contract Code:** the set of California statutes that govern how state and local agencies contract for goods and services.

### **Reimbursable Costs:** Expenses previously approved by the Participating Agency to be reimbursed, either on a Time and Materials or Cost Reimbursable basis as indicated in Exhibit B, Payment Provisions.

### **Services:** collectively, the services provided under this Agreement, including those services and Deliverables set forth in the Participation Agreement, and any incidental services or responsibilities that are reasonable and customary in the industry and not specifically described in this Agreement (or the Scope of Work), but which are required for the performance and delivery of these services.

### **Source Code:** human-readable program statements written by a programmer or developer in a high-level or assembly language that are not directly readable by a computer and that need to be compiled into object code before they can be executed by a computer.

### **Specifications:** with respect to each Deliverable, the detailed statements and documents setting out the functionality and requirements for each component of the Deliverable.

### **Statement/Scope of Work (SOW):** a statement of Services and/or Deliverables to be provided pursuant to and governed under the terms of the Participation Agreement, as agreed to by the Contractor and Participating Agency.

### **Subcontractor**: a person or business entity that has a contract (as an "independent contractor" and not an employee) with Contractor to provide some portion of the Work of this Agreement.

### **Task**: one or more functions, services, or actions, as specified in the Agreement, to be performed by Contractor for the Participating Agency

### **Term:** comprises the Initial Term and any Option Period.

### **Termination Assistance Period:** the period commencing upon the Expiration Date or earlier termination of this Agreement and expiring six (6) months thereafter, as such period may be extended by the Parties.

### **Termination Assistance Services:** means the Services, upon termination of any Participation Agreement and at mutually agreeable rates, to: (i) provide a complete copy of all Participating Agency Data in a mutually agreed industry standard file format, (ii) assign as specifically requested by the Participating Agency all of the rights, title and interest of Contractor in all orders and subcontracts relating to Contractor’s obligations under the Participation Agreement; (iii) take such action as may be necessary or as directed by the Participating Agency to preserve and protect the work previously performed by Contractor, and any property related to this Agreement in the possession of Contractor in which the Participating Agency has an interest; (iv) continue performance of any work as directed by the Participating Agency in writing, and (v) take any other steps reasonably required by the Participating Agency with respect to the Participation Agreement.

### **Termination Date:** has the same meaning as “Expiration Date” unless this MSA is validly terminated before the applicable Expiration Date, in which case Termination Date means the effective date this Agreement is validly terminated.

### **Third Party**: any individual or entity not a party to the Agreement.

### **Third Party Works:** Works that are licensed or obtained by Contractor from a Third Party.

### **Upgrades:** all new versions, bug fixes, error corrections, workarounds, updates, upgrades, modifications, patches and new releases of software, Deliverables, or Documentation.

### **Work**: any or all labor, services, Deliverables, equipment, supplies, Materials, Tasks, and any other items or activities necessary for the performance and completion of Contractor’s obligations in compliance with the requirements of the Agreement. Work may also include Work Orders, Tasks, Deliverables, and/or Submittals required by the Participating Agency.

### **Works**:all inventions (whether patentable or not), discoveries, literary works and other works and authorship (including software), designations, designs, know-how, technology, tools, ideas and information.

## Accounting.

Contractor will maintain a system of accounting and internal controls that meets Generally Accepted Accounting Principles (U.S. GAAP).

## Assignment and Subcontracting; Successors.

### **Permitted Assignments and Subcontracts.** Neither party may assign or subcontract its rights or duties under this MSA, except as follows:

#### The Orange Court may assign Participating Agency's rights and duties to any Participating Agency. Orange Court shall notify Contractor in writing within thirty (30) days following the assignment.

#### Either party may assign its rights and duties or subcontract portions of this MSA to a third party if the non-assigning party gives advance written consent to the assigning party. Consent may be withheld for any reason or no reason. If a non-assigning party does consent, the consent will take effect only if there is a written agreement between the assigning or subcontracting party and all assignees and subcontractors, stating the assignees and subcontractors:

##### are jointly and severally liable to the non-assigning party for performing the duties in this MSA of the assigning/subcontracting party;

##### affirm the rights granted in this MSA to the non-assigning party;

##### make the representations and warranties made by the assigning/subcontracting party in this MSA; and

##### appoint the non-assigning party an intended third party beneficiary under the written agreement with the assigning/subcontracting party.

#### No assignment or subcontract will release either party of its duties under this MSA.

### **Successors.** This MSA binds Orange Court and the Contractor as well as their heirs, successors, and assignees.

## Audit and Records.

### **Audit.** Upon reasonable Notice, Contractor will provide to Participating Agency, to any federal or state entity with monitoring or reviewing authority or to Participating Agency’s authorized representatives, access to and the right to examine and audit all records and documents relating to performance and billing under this MSA and each Participation Agreement, subject only to a lawyer’s duty of confidentiality owed to a represented party. Contractor agrees to provide each Participating Agency with all relevant information requested, and will permit access to its premises at reasonable times, for the purpose of interviewing employees and inspecting and copying any relevant records. Contractor shall correct errors and deficiencies by the 20th day of the month following the review or audit.

Contractor shall provide to the Participating Agency or its Contractors, on Contractor’s premises (or, if the audit is being performed of a Subcontractor, Subcontractor’s premises if necessary), space, office furnishings (including lockable cabinets), telephone and facsimile services, utilities and office-related equipment and duplicating services as the Participating Agency or its Contractors may reasonably require to perform the audits described in this Section. Without limiting the foregoing, this MSA and any Participation Agreements resulting from this MSA are subject to examinations and audit by the State Auditor for a period of three (3) years after final payment.

### **Copies.** Contractor may retain copies of any original documents Contractor provides to the Court.

### **Retention of Records.** Contractor will maintain all financial Data, supporting documents, and all other records relating to performance and billing under the Participation Agreement for a period in accordance with state and federal law. The minimum retention period will be four (4) years from the date of the submission of the final payment request or until audit findings are resolved, whichever is later.

## Certifications and Representations.

Contractor’s signature on the cover page shall also serve as certification for the following paragraphs, in this Section.

### **Authority and Binding Effect.** Contractor warrants it has the full power and authority to enter into and perform its obligations under this MSA and any resulting Participation Agreement(s), to grant the rights and licenses herein, and Contractor’s signatory has authority to bind Contractor to this MSA and any resulting Participation Agreement(s). This MSA and any resulting Participation Agreement(s) constitutes a valid and binding obligation of Contractor, enforceable in accordance with its terms. Contractor is qualified to do business and is in good standing in the State of California. The execution, delivery and performance of this MSA and any resulting Participation Agreement(s) have been duly authorized by all requisite corporate action on the part of Contractor.

### **Compliance with Permits, Laws, and Regulations.** Contractor complies in all material respects with all laws, rules, and regulations applicable to Contractor’s business and services, and pays all undisputed debts when they come due.

During the term of this MSA and any resulting Participation Agreement(s), Contractor will obtain and keep in full force and effect, all permits and licenses necessary to accomplish the Work. Such permits and licenses will be made available to the Participating Agency, upon request.

Contractor will promptly provide Notice to Orange Court and any Participating Agency of any conflict discovered between the Agreement and any applicable laws, rules, regulations, and/or permits and licenses, and await resolution of the conflict. If Contractor proceeds with the Work in question without resolution of the conflict, Contractor will be solely liable for any costs, fines, penalties, or damages that accrue, including costs for remedial work required to comply with such requirements.

### **Drug-free Workplace.** Contractor certifies that it and its Subcontractors will provide a drug-free workplace as required by Calif. Gov. Code, § 8355-8357.

### **Electronic Waste Recycling Act.** If the Participation Agreement provides for the purchase or lease of covered electronic devices under the Electronic Waste Recycling Act of 2003, Public Resources Code Sections 42460 et seq., Contractor complies with the requirements of that Act, and Contractor maintains documentation and provides reasonable access to its records and documents that evidence compliance.

### **Labor/Collective Bargaining.** Contractor certifies that it and its Subcontractors will provide Notice of their obligations under the foregoing provisions to labor organizations with which it or they have collective bargaining agreements, prior to execution of this MSA and any resulting Participation Agreement(s).

### **National Labor Relations Board (NLRB) Certification.** Contractor certifies that, within the immediately preceding two-year period, no more than one final, unappealable finding of contempt of Court by a federal Court has been issued against Contractor because of Contractor's failure to comply with an order of the National Labor Relations Board.

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

### **No Gratuities.** Contractor has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Participating Agency Personnel with a view toward securing this MSA or any resulting Participation Agreement(s) or securing favorable treatment with respect to any determinations concerning the performance of this MSA or any resulting Participation Agreement(s).

### **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 MSA or any resulting Participation Agreement(s)., and Contractor takes all reasonable steps to prevent harassment from occurring.

### **No Interference with Other Contracts.** To the best of Contractor’s knowledge, MSA or any resulting Participation Agreement(s).does not create a material conflict of interest, breach, or default under any of Contractor’s other contracts.

### **No Litigation.** No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or, to Contractor’s knowledge, threatened against or affecting Contractor or Contractor’s business, financial condition, or ability to perform this MSA or any resulting Participation Agreement(s)., except any suit, action, arbitration, proceeding, or investigation that individually or in the aggregate with others will not or would not have a material adverse effect on Contractor’s business, the validity or enforceability of this MSA or any resulting Participation Agreement(s)., or Contractor’s ability to perform under this MSA or any resulting Participation Agreement(s)..

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

### **Not an Expatriate Corporation.** Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286.1, and is eligible to contract with the Participating Agency.

### **Prohibition Against Hiring Court Employees.** Contractor certifies and will require all Subcontractors to certify to the following:

“Former Court employees will not be offered employment position for two years from the date of separation, if that employee participated in the decision-making process relevant to the Agreement, or for one year from the date of separation if that employee was in a policy-making position in the same general subject area as the proposed Agreement, within the prior twelve-month period of Court employment.”

### **Sales and Use Tax Collection.** Contractor collects and remits sales and use taxes as and to the extent required under the Revenue and Taxation Code.

### **Special Provisions regarding Compliance with National Labor Relations Board Orders.** If any resulting Participation Agreement(s) provide for making any purchase of goods or services from a private entity, except for a purchase of goods by credit card for an amount less than $2,500 from any one Contractor (but not to exceed in the aggregate $7,500 per year from the Contractor), 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.

### **Special Provisions regarding Compliance with the Child Support Compliance Act.** If Contractor is a private entity, and any resulting Participation Agreement provides for Compensation of $100,000.00 or more:

#### Contractor recognizes the importance of child and family support obligations and fully complies with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and

#### Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

### **Special Provisions regarding Compliance with the Sweat free Code of Conduct.** If the Participation Agreement provides for furnishing equipment, materials, or supplies other than public works, or for the laundering of apparel, garments or corresponding accessories:

#### No apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the Participating Agency under this MSA and the Participation 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 further declares under penalty of perjury that it adheres to the Sweat free Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108. This declaration is made under penalty of perjury.

#### Contractor cooperates 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 paragraph (a) and shall provide the same rights of access to the Participating Agency.

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

### **Special Provisions regarding Domestic Partners, Spouses, and Gender Discrimination.** If the Participation Agreement provides for total Compensation of more than $100,000, Contractor is in compliance with Public Contract Code Section 10295.3, which, subject to specified exceptions, generally prohibits discrimination in the provision of benefits between employees with spouses and employees with domestic partners, or discriminates between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex, or discriminates between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees.

### **Special Provisions for Agreements for Equipment, Materials, or Supplies; Loss Leader Prohibition.** If the Participation Agreement involves the furnishing of equipment, materials, or supplies, Contractor shall not sell or use any article or product as a “loss leader” as defined in Business and Professions Code Section 17030.

### **Special Provisions for Agreements for Certain Services with Compensation over $200,000.** If Participation Agreement provides for Services, other than consulting services, with total compensation over $200,000, Contractor shall give priority consideration in filling vacancies in positions funded by the Participation Agreement to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Public Contract Code Section 10353.

### **Special Provisions regarding Conflict Minerals.** Contractor certifies either; (i) it is not a “scrutinized company” as defined in PCC 10490(b), or (ii) the goods or services the Contractor will provide to the Participating Agency are not related to products and services that are the reason the Contractor must comply with Section 13(p) of the Securities Exchange Act of 1934.

### **Use of Postconsumer Material.** If the Participation Agreement provides for the purchase and sale of Goods specified in Public Contract Code Section 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), and the percentage of the Contractor’s postconsumer material in these Goods cannot be verified by reference to a written advertisement, including, for example, a product label, a catalog, or a manufacturer or Contractor website:

#### Contractor has delivered a declaration to the Participating Agency specifying the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200 in Goods offered or sold to the Participating Agency, regardless of whether the Goods meet the requirements of Public Contract Code Section 12209.1;

#### Under penalty of perjury, the declaration is true and correct and will remain so until Contractor delivers any amendment of a the current declaration to the Participating Agency, in which case the current declaration as amended will be true and correct; and

#### If Contractor sells under any printer or duplication cartridges that comply with Public Contract Code Section 12209 under the Participation Agreement, Contractor has so specified in the declaration required under this Section.

### **Work Eligibility.** All personnel assigned to perform work under the Participation Agreement are able to work legally in the United States and possess valid proof of work eligibility.

### **Work Standards –**Services will be rendered with promptness and diligence and will be executed in a professional manner, in accordance with the practices and professional standards used in well-managed operations performing services similar to the Services. During the term of this MSA and the Termination Assistance Period, Contractor shall, at its sole cost, correct any breach of this representation and warranty and do so as expeditiously as possible.

### **Efficiency and Cost Effectiveness –** Contractor will use efficiently Participating Agency resources or services necessary to provide the Services.

### **Covenant as to Representations and Warranties.** Contractor shall cause its representations and warranties to remain true during the Term. Contractor shall promptly notify the Participating Agency if any representation and warranty becomes untrue.

## Choice of Law and Jurisdiction.

California law, without regard to its choice-of-law provisions, governs this MSA or any resulting Participation Agreement(s). Jurisdiction for any legal action arising from this MSA or any resulting Participation Agreement(s) shall exclusively reside in state or federal courts located in California, and the parties hereby consent to the jurisdiction of such courts.

## Confidential Information.

### The provisions of this section shall survive beyond the expiration or termination of this MSA. Contractor will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Contractor protects its own confidential or proprietary information of a similar nature, and with no less than reasonable care and industry-standard care. During the Term and at all times thereafter, Contractor will refrain from using or permitting others to use Confidential Information in any manner or for any purpose not expressly permitted by this MSA or any resulting Participation Agreement(s). Contractor will not remove any Confidential Information from the Participating Agency’s facilities or premises without the Participating Agency’s express prior written consent. Upon the Participating Agency’s request and upon any termination or expiration of the Participation Agreement, Contractor will promptly (a) return to the Participating Agency or, if so directed by the Participating Agency, destroy all Confidential Information (in every form and medium), and (b) certify to the Participating Agency in writing that Contractor has fully complied with the foregoing obligations.

### **Permissible Disclosures.** Contractor may disclose Participating Agency’s Confidential Information on a “need to know” basis to Contractor’s employees and Subcontractors and any representatives of the Participating Agency that are working on the project, provided that they protect the Participating Agency’s confidential information to the same extent as this section. Additionally, Contractor may disclose the Confidential Information, to the extent necessary to (i) comply with any applicable law, rule, regulation, or ruling; (ii) respond to any enforceable summons or subpoena; or (iii) enforce its rights under the Participation Agreement, provided advance Notice has been delivered to the Participating Agency.

### **Publicity.** Contractor may not make a public announcement, or issue any press release or other writing, related to this MSA or any resulting Participation Agreement(s).without first obtaining Orange Court or the Participating Agency’s prior written approval, which may be denied for any or no reason.

### **Requirements of Strict Confidence.** While performing Work under MSA or any resulting Participation Agreement(s)., Contractor and its Subcontractors may gain access to Confidential Information that, if disclosed to Third Parties, may be damaging to the Participating Agency, its personnel, users, or other governmententity. Neither Contractor nor its Subcontractors acquires any right or title to the Confidential Information, and Contractor and its Subcontractors agree not to disclose any Confidential Information to any Third Party. All Confidential Information disclosed to Contractor or its Subcontractor will be held in strict confidence and used only in performance of Work under the Participation Agreement. In the event of any unauthorized disclosure or loss of Confidential Information, Contractor will immediately provide Notice to Participating Agency, with pertinent details of the unauthorized disclosure or loss, and any remedial measures taken.

### **Specific Performance.** Contractor understands a default under this section will result in irreparable damage for which no adequate remedy will be available. Accordingly, injunctive or other equitable relief is a remedy that the Participating Agency will be entitled to seek.

### **Consideration****,** Subject to the terms of this MSA and in accordance with the Participation Agreement, Contractor shall invoice the Participating Agency, and the Participating Agency shall compensate Contractor, as set forth in the Participation Agreement.

### **Contractor Status.**

### **Independent Contractor.**

#### Contractor, Subcontractors, and their officers, agents, employees, and all others acting on behalf of Contractor for this Work, act as independent contractors and not as Participating Agency agents, officers or employees. Contractor has no authority to bind or incur any obligation on behalf of the Participating Agency. Except as expressly provided in Exhibit C, Scope of Services, Contractor has no authority or responsibility to exercise any rights or power vested in the Participating Agency.

#### This MSA and any or all Participation Agreements signed under this MSA will not be considered under any circumstance to create a joint-venture relationship.

#### If any governmental entity concludes that Contractor is not an independent contractor, Orange Court may terminate this MSA immediately upon Notice. Additionally, Participating Agency’s may immediately terminate the Participation Agreement(s). Alternatively, Contractor may agree to a reduction in Participating Agency’s financial liability, so that the total cost under the Participation Agreement does not exceed the originally contemplated amount.

#### Contractor will indemnify and hold the Orange Court and any Participating Agency, harmless from all claims, costs, and liabilities resulting from third-party actions alleging an employment relationship between Participating Agency and any Contractor or Subcontractor personnel.

## Counterparts.

This MSA or any resulting Participation Agreement(s) may be executed in counterparts, each of which shall be considered an original.

## Default and Remedies.

### **Default.** A default exists under this MSA or any resulting Participation Agreement(s) if:

#### Contractor fails or is unable to meet for perform any of Contractor’s duties under this MSA or Participation Agreement(s), and this failure is not cured within thirty (30) days following Notice of default or is not capable of being cured within this cure period;

#### 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;

#### Contractor makes or has made under this MSA or any resulting Participation Agreement(s) any representation or warranty that is or was incorrect, inaccurate, or misleading;

#### Any act, condition, or thing required to be fulfilled or performed by Contractor to (i) enable Contractor lawfully to enter into or perform its obligations under this MSA or any resulting Participation Agreement(s), (ii) ensure that these obligations are legal, valid, and binding, or (iii) make this MSA or any resulting Participation Agreement(s) admissible when required is not fulfilled or performed.

### **Notices.** Contractor shall notify the Participating Agency immediately if Contractor defaults, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a default under this MSA or any resulting Participation Agreement(s).

### **Available Remedies.** The Participating Agency may do any of the following:

#### Withhold all or any portion of a payment otherwise due to Contractor, and exercise any other rights or setoff as may be provided in the Participation Agreement or any other Agreement between the Participating Agency and Contractor;

#### Require Contractor to enter into non-binding mediation;

#### Exercise, following Notice, the Participating Agency’s right of early termination of the Participation Agreement as provided below; and

#### Seek any other remedy available at law or in equity.

### **Remedies Cumulative.** All remedies provided for in this MSA and the Participation Agreement may be exercised individually or in combination with any other available remedy.

## Delinquent Taxpayer Code.

Pursuant to Public Contract Code (PCC) Section 10295.4, the Orange Court or any Participating Agency shall not enter into any contract for the acquisition of goods or services with a person or entity identified by the Franchise Tax Board (FTB) or the Board of Equalization (BOE) as one (1) of the 500 largest tax delinquents. Contractor certifies that they do not currently appear on and there is no reason to believe Contractor will/may be placed on the Delinquent Taxpayer lists.

Contractor must provide Notice to Orange Court and Participating Agency immediately if placed on and/or if there is reason to believe Contractor will/may be placed on the Delinquent Taxpayer list(s). Failure to provide such Notice will be determined to mean that Contractor is in breach of contract and will be responsible for all expenses associated with re-contracting, re-bidding and obligations under any PO, Agreement and Amendment(s).

Any contract entered into in violation of PCC Section 10295.4 is void and unenforceable as to Orange Court or the Participating Agency’s obligation(s) to Contractor until such time as Contractor has been removed from the Delinquent Taxpayer list(s).

## Dispute Resolution.

The Participating Agency and Contractor will attempt, in good faith, to resolve any disputes informally and promptly resolve any disagreement that arises (“Dispute”) than can be settled within the limits of authority granted under the MSA. Contractor will meet with the Participating Agency’s Project Managers or other designated representative(s) to discuss the matter and any actions necessary to resolve a dispute.

### **Escalation**

#### Senior Level Negotiations - If the settlement of a disagreement is beyond the authority allowed the Project Managers under this MSA or Participation Agreement or if a disagreement has in the opinion of a party persisted for an undue length of time, the party to the dispute may submit a written Notice to the other party that the parties to the dispute will commence the procedure set forth in this Section 14 to resolve the Dispute (“Dispute Notice”). The Dispute Notice shall include: (i) detailed factual information and supporting documentation in support of the submitting Party’s position; (ii) the specific MSA provisions on which the Dispute is based; and (iii) if the Dispute involves a cost adjustment, the exact amount of the cost adjustment accompanied by all records supporting the submitting party’s position. The Dispute Notice shall include a written statement signed by an authorized representative of the submitting party indicating that the Dispute Notice is made in good faith, that the supporting data and documents are accurate and complete, and that the amount requested, if any, accurately reflects the adjustment for which the submitting party believes the other party is responsible. To assist the other party in its review of the Dispute, the submitting party shall promptly comply with reasonable requests for additional information.

#### Dispute Notice Response - Within fifteen (15) Days of receiving the Dispute Notice, the receiving party shall provide a written response to the submitting party’s Dispute Notice (“Dispute Notice Response”). The Dispute Notice Response shall include: (i) detailed factual information and supporting documentation in support of the receiving party’s position; and (ii) if the Dispute involves a cost adjustment, state the exact amount that the receiving party believes is at issue accompanied by all records supporting the receiving party’s position.

#### Senior Level Negotiations - If after fifteen (15) Days of receipt of the Dispute Notice Response by the submitting party or, in the event that the receiving party fails to timely submit a Dispute Notice Response, either party may, by providing written Notice to the other party, request that the Dispute be resolved by direct negotiations between senior level negotiators of the parties (“Senior Level Negotiations Notice”). The senior level negotiators shall meet in person or by phone as often as they deem reasonably necessary to exchange information and attempt to resolve the Dispute within thirty (30) days after the Senior Level Negotiations Notice is given to the other party.

#### Mediation - If after the senior level negotiations do not result in resolution of the Dispute within thirty (30) days of the receipt of the Dispute Notice, the parties to the Dispute agree to mediation prior to any party initiating an action in court.

#### Litigation - If the senior level negotiations and the mediation provided for in this Section 14.1.5 do not result in resolution of the Dispute, any party to the dispute may pursue any legally available remedy.

#### Confidentiality - All negotiations conducted pursuant to this provision are confidential and shall be treated as compromise and settlement negotiations to which California Evidence Code Section 1152 applies. The mediation shall be confidential and shall be subject to the provisions of California Evidence Code Sections 703.5 and 1115 through 1128.

#### Continuation of Work - Pending the final resolution of any dispute arising under, related to or involving this MSA or applicable Participation Agreement, Contractor agrees to diligently proceed with the performance of this MSA and all Participation Agreements, including the delivery of Deliverables or providing of Services in accordance with this MSA. Contractor’s failure to diligently proceed in accordance with the requirements of this MSA and any applicable Participation Agreement will be considered a material breach of this MSA and the Participation Agreement. The foregoing provisions of this Section 14 shall be subject to each party’s rights of Termination under Section 30.

## Force Majeure.

### Force Majeure events include, but are not limited to:

#### catastrophic acts of nature, or public enemy;

#### civil disorder;

#### fire or other casualty for which a party is not responsible; and

#### quarantine or epidemic.

The party asserting a Force Majeure event will immediately provide Notice to the other party of the occurrence and nature of the Force Majeure event, and its expected impact on schedule. The party claiming Force Majeure will use commercially reasonable efforts to continue or resume performance, including alternate sources or means. Contractor will have no right to additional payment for costs incurred as a result of a Force Majeure event.

### Any assertion of a Force Majeure event by Subcontractors will be attributed to Contractor.

## Indemnity.

Contractor shall indemnify and defend (with counsel satisfactory to the Office of the General Counsel) Orange Court, the Participating Agency and hold harmless the Administrative Office of the Court, Judicial Council, Participating Agency, and each of their respective officials, officers, agents, contractors, and employees against any and all claims, actions, suits, proceedings, damages, losses, and expenses, including attorney fees and costs, liabilities and deficiencies, including interest, penalties and settlement amounts, founded upon (i) Contractor’s performance of, or failure to perform, the Services or Contractor’s other duties under this MSA or any resulting Participation Agreement(s), or (ii) any other breach by Contractor of this MSA or any resulting Participation Agreement(s). 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.

## Infringement Protection.

Contractor shall hold the Orange Court and the Participating Agency and its respective officers, agents, and employees harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted compositions, secret process, or patented or unpatented invention, article, or appliance furnished or used in connection with this MSA or any Participation Agreement resulting from this MSA.

## Insurance Requirements; Required Coverage.

### **General Insurance Requirements:** Before Contractor begins performing Services, Contractor shall give the Orange Court and/or the Participating Agency, as applicable, certificates of insurance attesting to the existence of coverage, and stating that in the event of cancelation the insurance carrier shall provide written Notice to the Orange Court and/or the Participating Agency pursuant to the policy terms. In the event of any termination, cancellation or non-renewal of the policies required hereunder, Contractor shall provide the Orange Court and/or Participating Agency thirty (30) days prior written Notice. Any replacement certificates of insurance are subject to the approval of the Orange Court and Participating Agency, and, without prejudice to the Orange Court and Participating Agency, Contractor shall not perform work before the Orange Court and Participating Agency approve the certificates. Contractor shall also require each of its subcontractors to provide certificates of insurance to the Orange Court and Participating Agency. Unless otherwise agreed by the parties, insurance coverage provided by subcontractors as evidence of compliance with the insurance requirements of this Section 18 shall be subject to all of the requirements stated herein except for professional errors and omissions liability insurance.

### **Qualifying Insurers:** All insurance which Contractor is obligated to carry pursuant to this MSA and applicable Participation Agreements, shall (i) with respect to commercial general liability insurance, be endorsed to name the Orange Court and each Participating Agency and their respective officials, officers, agents, contractors, and employees as additional insureds, and (ii) require the insurer to provide written Notice to the Orange Court and Participating Agency of cancellation. For full coverage, each insurance policy shall be written on an “occurrence” form; excepting that insurance for professional liability, errors and omissions when required, may be acceptable on a “claims made” form. Contractor shall cause its insurers to issue to the Orange Court and Participating Agency on or before the Effective Date certificates of insurance evidencing that the coverage required under this MSA and applicable Participation Agreements are maintained in force. The insurers selected by Contractor shall be reputable and financially responsible insurance carriers, with a Best’s minimum rating of “A-” (or any future equivalent) and shall be approved to do business in the State of California.

### **Consequences of Lapse:**  If required insurance lapses during the Term, the Participating Agency is not required to process invoices after such lapse until Contractor provides evidence of reinstatement that is effective as of the lapse date.

### **Minimum Scope and Limits of Coverage:** Contractor shall maintain the following minimum insurance in full force during the Term of the Agreement:

#### **Worker’s Compensation and Employer’s Liability.** The policy is required only if Contractor has employees. It must include worker’s 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.

#### **Commercial General Liability Insurance.** Commercial General Liability Insurance provided on an occurrence form with limits of not less than $1,000,000 per occurrence, and a $2,000,000 annual aggregate The policy must coverage for liabilities arising out of premises and operation, independent contractors, products – completed operations, liability assumed under an insured contract, personal and advertising injury liability, at minimum limits of $1,000,000 per occurrence, and a $2,000,000 annual aggregate.

#### **Professional Liability.** The policy must cover liability resulting from any act, errors or omissions committed or alleged to have been committed by the Contractor’s or any person or organization for whom the Contractor is responsible that arises out of professional services provided in the performance of the Work under the Participation Agreement, at minimum limits of $1,000,000 per claims made or per occurrence, and a $2,000,000 annual aggregate.

#### **Commercial Automobile Liability.** The policy must cover bodily injury and property damage liability and be applicable to all vehicles used in Contractor’s performance of the Work under the Participation Agreement whether owned, non-owned, leased, rented, or hired. The minimum liability limit must be $1,000,000 per occurrence, combined single limit.

#### **Claims Made Coverage.** If any required insurance is provided on a “claims made” form, Contractor shall maintain the coverage continuously throughout the Term, and, without lapse, for three (3) years beyond the termination or expiration of the Participation Agreement and the Participating Agency’s acceptance of all Work provided under the Participation Agreement. The retroactive date or “prior acts inclusion date” of any “claims made” policy must be no later than the date the Work commences under the Participation Agreement.

#### **Umbrella Policies.** Contractor may satisfy basic coverage limits through any combination of primary insurance, excess liability insurance or umbrella liability insurance.

### **Deductibles and Self-Insured Retentions:** Any deductibles or self-insured retentions that exceed $100,000 per occurrence must be declared to, and approved by, the Participating Agency. The deductible and/or self-insured retentions will not limit or apply to Contractor’s liability to the Participating Agency and shall be the sole responsibility of Contractor.

### **Consequences of Lapse; Failure to Maintain Insurance.**

#### **Consequences of Lapse.** If required insurance lapses during the Term, the Participating Agency is not required to process invoices after such lapse until Contractor provides evidence of reinstatement that is effective as of the lapse date.

#### **Failure to Maintain Insurance.** If Contractor fails to obtain the appropriate Waiver(s) of Recovery or Subrogation, Additional Insured status(es), or Certificates of Insurance from carrier, Contractor shall indemnify the State of California, the Judicial Council of California, the Administrative Office of the Courts, the County of Orange, and the Superior Court of California, County of Orange and the Presiding Judge, its elected and appointed officials, officers, agents and employees from all costs and liability caused by Contractor’s breach.

### **Partnerships.** If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either of the following methods:

#### **Separate.** Separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or

#### **Joint.** Joint insurance program with the association, partnership, or other joint business venture included as a named insured.

## Intellectual Property.

Contractor shall perform its obligations under this MSA and the Participation Agreement in a manner that the Services (including each Deliverable) and any portion thereof, does not infringe, or constitute and infringement, misappropriation or violation of, any Intellectual Property Right. Contractor has full Intellectual Property Rights and authority to perform all of its obligations under this MSA and the Participation Agreement, and Contractor is and will be either the owner of, or authorized to use for its own and the Participating Agency’s benefit, all Contractor Works and Third Party Works used and to be used in connection with the Services.

## Limitation of Liability.

Orange Court and any Participating Agency will not be liable to Contractor, its officers, employees, Subcontractors, or Third Parties for any indirect, special, or consequential damages, including lost profits or revenue, arising from or relating to this MSA or any resulting Participation Agreement(s), regardless whether Orange Court or the Participating Agency was advised of the possibility of such loss or damage. In no event will Orange Court or the Participating Agency’s liability for direct damages arising from or related to this MSA or any resulting Participation Agreement(s), for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, exceed the amounts paid to Contractor by Orange Court or any Participating Agency under this MSA or any resulting Participation Agreement(s).

## Limitation on Non-Domestic Work.

Contractor may not perform any portion(s) of the Services that would include Participating Agency data, information or materials; and and/all Participating Agency or Participating Agency-related materials, data, information, records, etc. outside the United States. Those portion(s) must remain in the United States at all times, regardless of whether such items are considered Confidential Information.

## Miscellaneous Provisions; Interpretation.

### **Special Provisions for Agreements Providing for Compensation of $50,000 or more; Union Activities Restrictions.** As required under Government Code Sections 16645-16649, if the Participation Agreement provides for total Compensation of $50,000 or more to Contractor, then the covenants in this Section apply to Contractor’s activities. Contractor shall not:

#### Assist, promote, or deter union organizing by employees performing work under state or judicial branch contracts;

#### Use the state’s or Participating Agency’s funds received under the Participation Agreement to assist, promote, or deter union organizing; or

#### For any business conducted under the Participation Agreement, use any property of the state or the Participating Agency to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote, or deter union organizing, unless the state or judicial branch property is equally available to the general public for holding meetings.

If Contractor incurs costs, or makes expenditures to assist, promote, or deter union organizing, Contractor shall maintain records sufficient to show that no reimbursement from the state’s or the Participating Agency’s funds has been sought for these costs, and provide those records to the Attorney General upon request.

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

### **Special Provisions regarding Ownership of Results.**

#### *Special Provisions regarding Grant Funds.* If the Participation Agreement provides Compensation to Contractor for a project funded through a grant, at the conclusion of the Project, title to all expendable and non-expendable personal property with a value of $500 or more purchased with the Participating Agency’s funds shall vest, automatically and without further action of the parties, with the Participating Agency. If Contractor provides written certification to the Participating Agency that the property will continue to be used for grant-related purposes and the Participating Agency approves such certification in writing, the Participating Agency may permit title to all such property to remain with Contractor in accordance with the Participating Agency’s written instructions. Contractor must await specific written instructions from the Project Manager regarding any transfer of title or disposition.

#### *Special Provisions regarding Ownership of Certain Equipment.* If Compensation under the Participation Agreement is not through grant funding and this Participation Agreement provides for the provision of equipment purchased or built with the Participating Agency’s funds, title to any equipment purchased or built with Participating Agency funds shall vest in the Participating Agency immediately upon payment of the purchase price. Before delivery to the Participating Agency, Contractor is responsible for loss or damage to the equipment to the extent it results from the negligent act or omission of Contractor or its directors, officers, employees, or agents, and Contractor shall make all necessary or appropriate repairs and adjustments.

### **Special Provisions Applicable to Competitively Bid Contracts; Antitrust Claims.** If Services or Goods under this MSA or any resulting Participation Agreement(s) were obtained by means of a competitive bid, Contractor shall comply with the requirements of Government Code sections set out below.

#### Contractor shall assign to the Participating Agency 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 Participating Agency pursuant to the bid. Such assignment shall be made and become effective at the time the Participating Agency tenders final payment to the Contractor. (GC 4552)

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

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

## Modification.

No modification or change to this MSA or any resulting Participation Agreement(s) will be valid without written approval by Orange Court, in the form of an Amendment. No modification or changes to each Participation Agreement will be valid without written approval by the Participating Agency in the form of an Amendment.

## Notices.

Notices under this MSA must be in writing and signed by an authorized representative of either party to this MSA, providing formal notification. Notices may be delivered in person, via a reputable express carrier, by registered or certified mail (postage pre-paid), or by email. Notice is effective on receipt; however, any correctly addressed Notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified will be treated as effective on the first day that the Notice was refused, unclaimed, or deemed undeliverable. Notices must be addressed to the individual(s) in the table below. Either party may change its address for receipt of Notice by entering a different recipient and address below or by giving Notice at any time to the other party in the manner permitted by this paragraph.

|  |  |
| --- | --- |
| **Orange Court** | **Contractor** |
| Katherine Moncrief | Contractor Contact Name |
| Sr. Contract Administrator | Title |
| 700 Civic Center Drive West, Santa Ana, CA 92701 | Contractor’s Address |
| Phone: To be provided upon award | Phone: (XXX)XXX-XXXX |
| Email: kmoncrief@occourts.org | Email: xxxxxxxxxxxxx |

## Prohibited Bids for End Product of this Agreement.

No person, firm, or subsidiary thereof which has been awarded a consulting services agreement may submit a bid for, or be awarded an agreement for, the provision of services, procurement of Materials or Data, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the Participation Agreement. This provision will not apply to any person, firm, or subsidiary thereof, which is awarded a subcontract under this Participation in an amount no more than ten percent of the total monetary value of the Participation Agreement.

## Public Contract Code.

Effective March 24, 2011, Part 2.5 of the California Public Contract Code (§ 19201 – 19210), cited as the California Judicial Branch Contract Law, requires the Judicial Branch (including the Participating Agency) to comply with Public Contract Code parts that apply to state agencies and departments re: procurement of goods/services.  The California Judicial Branch Contract Law applies to all contracts initially entered into or amended by Judicial Branch Entities (including the Participating Agency) on or after October 1, 2011.

## Scope of Services; Delivery; Acceptance.

### **Scope of Services.** Contractor will perform and complete all Work described in Exhibit C, Scope of Services, in compliance with the requirements of this MSA, and to the satisfaction of each Participating Agency as further defined in each individual Participation Agreement.

### **Delivery**. Contractor shall deliver to the Court the Deliverables in accordance with this MSA and each individual Participation Agreement.

### **Acceptance.** All Work provided by Contractor under this MSA and each individual Participation Agreement is subject to written acknowledgement and acceptance by the Participating Agency Project Manager. The Participating Agency Project Manager will apply the acceptance criteria set forth in Participation Agreement, (including timeliness, completeness, technical accuracy and conformance to statistical, industry or marketplace standards) to determine acceptance or non-acceptance of the Work.

### If the Work is not acceptable, the Participating Agency Project Manager shall detail its failure to meet the acceptance criteria. Contractor shall have ten (10) business days from receipt of Acceptance and Sign-Off Form (Sample included in the Participation Agreement.) to correct the failure(s) to conform to the acceptance criteria. Contractor will re-submit the Work and the Project Manager shall re-apply the acceptance criteria to determine its acceptance or non-acceptance. Thereafter, the parties shall repeat the process set forth in this Section 27 until Contractor’s receipt of Participating Agency’s written acceptance of such corrected Work; provided, however, that if Participating Agency rejects any Work on at least two (2) occasions, Participating Agency may terminate that portion of the Participation Agreement which relates to the rejected Work at no expense to Court.

### If or when Contractor does not provide service(s) as specified, the Participating Agency may provide or contract with others to provide the service(s), and the amount payable under the Participating Agreement shall be reduced by the cost to the Participating Agency of labor, material, overhead, and administration for such corrective action. Such action does not constitute an acceptable alternative to performance of the Work by the Contractor.

### If the Participating Agency rejects any Services or Work Product after payment to Contractor, the Participating Agency may exercise all contractual and other legal remedies, including (i) setting off the overpayment against future invoices payable by the Participating Agency, (ii) setting off the overpayment against any other amount payable for the benefit of Contractor pursuant to this MSA or Participation Agreement or otherwise, and (iii) requiring Contractor to refund the overpayment within thirty (30) days of the Participating Agency request

### **Prior Work**. Prior work, performed by Contractor pursuant to Participating Agency authorization, but before execution of this MSA and a Participation Agreement, will be considered as having been performed subject to the provisions of this MSA and the Participation Agreement.

### **Non-Exclusivity.** This is a non-exclusive Agreement. Participating Agency reserves the right to perform, or have others perform the Work of this Agreement. Participating Agency reserves the right to bid the Work to others or procure the Work by other means.

## Standard of Performance; Warranties.

### **Standard of Performance**.Contractor will perform all Work with the requisite skill and diligence consistent with professional standards for the industry and type of work performed under the Participation Agreement, and pursuant to the governing rules and regulations of the industry. Contractor understands that the Participating Agency relies on the accuracy, competence, and completeness of Contractor’s services.

### **Warranties.**

#### Contractor warrants and represents that all Work shall meet all applicable requirements of the latest revision of the Mechanical, National Electrical, Unified Building and Plumbing, and any other code which may apply to the Work. Contractor must warranty all Work against defects in workmanship; and shall satisfactorily correct, at no cost to the Participating Agency, any such defect that may become apparent within a period of one (1) year after completion of the work. The warranty period shall commence upon date of acceptance by the Participating Agency’s approval of designs or specifications furnished by Contractor will not relieve Contractor of its obligations under this warranty.

Contractor warrants and represents that all parts furnished during the Work shall be the latest improved models in current production, as offered to commercial trade, and shall be of quality material. USED, SHOPWORN, DEMONSTRATOR, PROTOTYPE, RECONDITIONED OR DISCONTINUED MODLES OR MATERIALS ARE NOT ACCEPTABLE. The warranty period for Contractor provided materials shall be for a period of one (1) year after completion of the installation or within manufacturer’s warranty, whichever is the later period. The warranty period shall commence upon date of acceptance by the Participating Agency. Contractor shall provide specified Participating Agency Project Manager with all manufacturers’ warranty documents upon completion of the installation and prior to leaving the job site.

#### **Non-Infringement**. Contractor represents and warrants to Participating Agency that it is and will be either own, or be authorized to use for its own and the Participating Agency’s benefit, all intellectual property rights used and to be used in connection with providing and/or performing the Work.

#### All warranties will inure to Participating Agency, its successors, assigns, customer agencies, and users of the Work provided hereunder.

#### Unless otherwise specified, the warranties set forth in this Section 28 commence after Work has been approved and accepted by Participating Agency.

## Survival.

Terms that will survive termination or expiration of this MSA or any resulting Participation Agreement(s) include, but are not limited to: Assignment, Audit Rights and Retention of Records, Confidentiality, Indemnification, Limitation of Liability, Warranties.

## Termination.

### **Termination for Cause.** Orange Court may terminate this MSA, in whole or in part, and be relieved of any payments, if Contractor fails to perform the requirements of this MSA in the time and manner agreed. The Participating Agency may terminate their Participation Agreement, in whole or in party, and be relieved of any payments, if Contractor fails to perform the requirements of the Participation Agreement in the time and manner agreed. A Participating Agency may proceed with the Work in any manner deemed proper. All costs to the Participating Agency arising from Contractor’s default, including costs to complete or correct the Work, will be deducted from any sum due Contractor. Contractor will not be entitled to recover overhead or profit on the uncompleted portions of the Work.

### If the Participating Agency terminates the Participation Agreement or any portion thereof for cause, the Participating Agency may acquire from third parties, under the terms and in the manner the Participating Agency considers appropriate, goods or services equivalent to those terminated, and Contractor shall be liable to the Participating Agency for any excess costs for those goods or services. Notwithstanding any other provision of the Participation Agreement, in no event shall the excess cost to the Participating Agency for such goods or services be excluded under the Participation Agreement as indirect, incidental, special, exemplary, punitive or consequential damages of the Participating Agency. Contractor shall continue the Services not terminated hereunder.

### **Termination for Convenience.**

#### Orange Court may terminate this MSA, in whole or in part, at any time and for any reason, upon at least ten (10) days’ Notice to Contractor. Any termination or non-renewal of this MSA as provided herein shall not operate as to terminate any Participation Agreement, including the renewal or extensions negotiated by the Participating Agency, which was entered into this MSA while the same was in effect.

#### The Participating Agency may terminate their Participation Agreement, in whole or in part, at any time and for any reason, upon at least ten (10) days’ Notice to Contractor. Upon receipt of the termination Notice, Contractor will promptly discontinue Work as specified in the Notice.

#### If the Participating Agency terminates all or part of the Participation Agreement other than for cause, the Participating Agency will pay Contractor for the Work satisfactorily performed prior to the termination. Contractor will not recover overhead or profit on the uncompleted portions of the Work.

### **Termination due to Fund Appropriation and Availability.**

#### Participating Agency's obligations under the Participation Agreement are subject to the availability of funds authorized for this Work. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of the Participation Agreement. Funding beyond the current Appropriation Year is conditioned upon appropriation of sufficient funds to support the activities described in the Participation Agreement.

#### Upon Notice, Participating Agency may terminate the Participation Agreement in whole or in part, without prejudice to any right or remedy of Participating Agency, for lack of appropriation of funds. Upon termination, Participating Agency will pay Contractor for the fair value of Work satisfactorily performed prior to the termination, not to exceed the total Participation Agreement amount.

### **Termination due to Death, Permanent Incapacity.** This entire MSA will terminate immediately without further action of the parties upon the death or temporary or permanent incapacity, of a natural person who is a party to this MSA or a general partner of a partnership that is a party to this MSA.

### **Effect of Termination and/or Expiration.**

#### Upon any expiration or termination, Participating Agency will have the right to take possession of any materials, equipment, Deliverables, and other Work including partially completed Work. Contractor will immediately assign to Participating Agency all of Contractor’s right, title, and interest in and to such Work and related materials and Work product, and any and all intellectual property rights.

##### Contractor shall return to the Participating Agency any equipment purchased or built with Participating Agency funds, with costs incurred by Contractor being reimbursed by the Participating Agency.

#### Upon termination of any kind, Participating Agency may withhold from payment any sum that Participating Agency determines to be owed to Participating Agency by Contractor, or necessary to protect Participating Agency against loss due to outstanding liens or claims of former lien holders.

#### Upon the Expiration/Termination Date:

##### The Participating Agency shall be released from compensating Contractor for Services, other than those Contractor satisfactorily performed before the Termination Date, and for any indirect costs.

##### Without prejudice to the Participating Agency, Contractor shall be released from performing Services.

### **Termination Assistance Services**

#### Termination Assistance Services - Termination Assistance Services will be provided to the Orange Court and any Participating Agency by Contractor regardless of the reason for termination or expiration for a period of six (6) months following Notice of Termination. At the Participating Agency’s option and election, the Participating Agency may extend the Termination Assistance Period for an additional six (6) months at the rates negotiated upon a Participating Agency’s request for Termination Assistance Services.

#### Breach of Termination Assistance Services - If Contractor breaches (or attempts or threatens to breach) its obligations to provide the Orange Court or Participating Agency with Termination Assistance Services, the Orange Court or Participating Agency will be irreparably harmed and may proceed directly to court. If a court should find that Contractor has breached (or attempted or threatened to breach) any such obligations, Contractor agrees that without any additional findings of irreparable injury or other conditions to injunctive relief, it will not oppose the entry of an order compelling performance by Contractor and restraining it from any further breaches (or attempted or threatened breaches).

## Cancelation Rights.

The Participating Agency may also cancel delivery immediately of all or any portion of unshipped Goods or limit Contractor’s Services, and, proportionately, Contractor’s compensation except to reimburse Contractor for its actual costs incurred before expenses arising out of early termination by the Participating Agency, and any direct and indirect expenses incurred by cancellation of Goods in process that are custom made for the Participating Agency, if terminated for reason of cause as defined in Section 30.1, Termination for Cause.

## Time is of the Essence.

Time of performance is of the essence in the performance of services by Contractor under the Participation Agreement.

## Waiver; Severability.

### **Waiver of Rights.** Orange Court’s action, inaction or failure to enforce any right or provision of this MSA is not a waiver of its rights and will not prevent the Orange Court from enforcing such rights on any future occasion. The Participating Agency’s action, inaction, or failure to enforce any right or provision of the Participation Agreement is not a waiver of its rights, and will not prevent the Participating Agency from enforcing such rights on any future occasion.

### **Severability.** The provisions of this MSA or any resulting Participation Agreement(s) will be effective in all cases, unless otherwise prohibited by applicable state or federal law. The provisions of this MSA or any resulting Participation Agreement(s) are separate and severable. The invalidity of any sentence, paragraph, provision, section, or portion of this MSA or any resulting Participation Agreement(s) will not affect the validity of the remainder of this MSA or any resulting Participation Agreement(s).

## Qualification in California.

Contractor is, and will remain for the term of this MSA or any resulting Participation Agreement(s), qualified to do business and in good standing in California.

## Iran Contracting Act.

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 the Participation Agreement pursuant to PCC 2203(c).

## Loss Leader.

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.

## Public Agency Clause (“PIGGYBACKING”).

This MSA is a result of an open, competitive procurement, specifically RFP #1310-002 (“RFP”), conducted in December 2013 and January 2014. The RFP process and the content and form of this MSA and Participation Agreement are in full accordance with the rules, regulations and requirements of the California Judicial Branch Contract Manual.

Other California JBEs or any government agency located in the State of California can “piggyback” on this MSA to utilize Contractor for Online Bidding and Ancillary Services via the use of a Participation Agreement. The Participating Agency is responsible for negotiating its own pricing with Contractor.

### **Competitive Pricing** - The fees paid by a Participating Agency to Contractor shall be at least as low as those fees charged by Contractor to its other customers in similarly situated local and state government that are receiving services substantially similar to the Services or receiving the Licensed Software under the same terms, considerations and scope, as applicable (“Government Contract”). If, during the term of this MSA or the Termination Assistance Period, Contractor enters into a Government Contract that contradicts the foregoing sentence, Contractor shall (a) give all Participating Agencies immediate Notice of any such lower pricing, and (b) offer to the Participating Agency an immediate adjustment to the terms of this MSA and all Participation Agreements to reflect such lower pricing, which shall take effect on the effective date of the relevant Government Contract as related to the products/services not yet delivered to the Participating Agency hereunder or renewals and/or extensions negotiated thereafter by Contractor and Participating Agency. Nothing herein shall preclude Contractor from offering reductions in the Maximum Amount Payable for bulk purchases by the cooperating Participating Agency acting in concert.

### Orange Court assumes absolutely no liability or responsibility of any type or any fashion related to any courts, JBE, or any other government agencies, use of this MSA, or such court’s/JBE’s/agency’s business relationship with Contractor.

## Intellectual Property.

### **Contractor/Third Party Works.** Contractor shall set forth in an exhibit to each Statement of Work all Contractor Works and Third Party Works that Contractor intends to use in connection with that Statement of Work. The Participating Agency shall have the right to approve in writing the introduction of any Contractor Works or Third Party Works into any Deliverable or Service prior to such introduction. Contractor grants to the Participating Agency, together with all Participating Agency Contractors, without additional charge, a perpetual, irrevocable, royalty-free, fully paid-up, worldwide, non-exclusive license to use, reproduce, perform, display, transmit, distribute, modify, create derivative works of, make, have made, sell, offer for sale and import Contractor Works and Third Party Works (including Source Code) and to sublicense such rights to other entities, in each case for the purpose of conducting the Participating Agency’s business.

### **Rights in Developed Works.** Upon their creation, the Developed Works (and all Intellectual Property Rights therein) will be the sole and exclusive property of the Participating Agency. Contractor (for itself, Project Staff and Subcontractors) hereby irrevocably assigns, transfers and conveys to the Participating Agency without further consideration all worldwide right, title and interest in and to the Developed Works, including all Intellectual Property Rights therein. Contractor further agrees to execute, and shall cause Project Staff and Subcontractors to execute, any documents or take any other actions as may be reasonably necessary or convenient to perfect the Participating Agency’s or its designee’s ownership of any Developed Works and to obtain and enforce Intellectual Property Rights in or relating to Developed Works. Contractor may use Developed Works solely to provide the Services during the term of the Participation Agreement. Contractor shall promptly notify the Participating Agency upon the completion of the development, creation or reduction to practice of any and all Developed Works.

### **Retention of Rights.** The Participating Agency retains all rights, title and interest (including all Intellectual Property Rights) in and to the Participating Agency Works. Subject to rights granted herein, Contractor retains all rights, title and interest (including all Intellectual Property Rights) in and to the Contractor Works.

### **Third-Party Rights.** Contractor hereby assigns to the Participating Agency all of Contractor’s licenses and other rights (including any representations, warranties, or indemnities that inure to Contractor from third parties) to all Third Party Works incorporated into the Deliverables or Services. If such licenses and rights cannot be validly assigned to or passed through to Participating Agency by Contractor without a Third Party’s consent, then Contractor will use its best efforts to obtain such consent (at Contractor’s expense) and will indemnify and hold harmless the Participating Agency, Judicial Branch Entities and Judicial Branch Personnel against all Claims arising from Contractor’s failure to obtain such consent.

### **Third Party** Notwithstanding anything in the Participation Agreement to the contrary, the Participating Agency shall have the right to perform or contract with a Third Party to perform any service within or outside the scope of the Services, including services to augment or supplement the Services or to interface with the IT Infrastructure of the Participating Agency or Participating Agency Contractors. In the event the Participating Agency performs or contracts with a Third Party to perform any such service, Contractor shall cooperate in good faith with the Participating Agency and any such Third Party, to the extent reasonably required by the Participating Agency. As requested and approved in advance in writing the Participating Agency may reimburse Contractor for its actual out-of-pocket costs and personnel time based on a discounted rate table set forth in the applicable Statement of Work, in each case, in providing such assistance. Such cooperation shall include, without limitation, providing such information as a person with reasonable commercial skills and expertise would find reasonably necessary for the Participating Agency or a Third Party to perform its work relating to the Services defined herein.

## Entire Agreement.

### Headings or captions to the provisions of this MSA are solely for the convenience of the parties, are not part of this MSA, and will not be used to interpret or determine the validity of the MSA and Participation Agreement.

### This MSA was negotiated between the parties, and neither party “prepared” this MSA or Participation Agreement for purposes of California Civil Code §1654. Any ambiguity will not be construed against the drafter, but rather the terms and provisions will be given a reasonable interpretation.

### This MSA constitutes the entire and final understanding of the parties regarding this matter, and supersedes and terminates any and all prior or contemporaneous negotiations, representations, understandings, discussions, offers, proposals, or agreements between the parties, whether written or oral, express or implied, relating in any way to the this matter.

***END OF EXHIBIT A***

# EXHIBIT B: PAYMENT PROVISIONS

## Contract Amount.

There are no fees or costs encumbered by this MSA.

Fees or costs that Contractor charges under specific contracts for Participating Agency shall be subject to Contractor’s Cost Proposal Response, Attachment B in the RFP. A Participating Agency may choose to further negotiate fees with the Contractor; however, costs charged to a Participating Agency shall be subject to those listed in the Participation Agreement at a maximum, unless a lower fee is agreed upon by both the Individual Participating Agency and the Contractor.

Each individual Participating Agency’s Participation Agreement shall set forth a payment schedule, consistent with this MSA, the applicable Participation Agreement and the applicable requirements of the Public Contract Code, Judicial Branch Contract Law and the Judicial Branch Contracting Manual.

## Taxes.

The Participating Agency is exempt from federal excise taxes and no payment will be made for any taxes levied on Contractor’s or any Subcontractor’s employees’ wages. The Participating Agency will pay for any applicable State of California or local sales or use taxes on the Deliverables provided or Services rendered pursuant to the Participation Agreement.

## Method of Payment

### The Contractor will submit invoices as it relates to the contract.

### The individual Participating Agency pays Net 30 in arrears – after the services on the invoice are delivered and accepted. License Fees and maintenance fees shall be paid Net 30 in arrears pursuant to the schedule set forth in the Participation Agreement.

### Contractor will only invoice for the Work in scope and will not invoice for Work out of scope.

## Payment.

### The Participating Agency will endeavor to pay invoices within thirty (30) days after receipt of a correct, itemized invoice. In no event shall the Participating Agency be liable for interest or late charges for any late payments.

### Payment shall be made by the Participating Agency to the Contractor at the address specified on the invoice.

### The Participating Agency may withhold full or partial payment to the Contractor in any instance in which the Contractor has failed or refused to satisfy any material obligation provided for under the Participation Agreement.

***END OF EXHIBIT B***

# EXHIBIT C: SCOPE OF SERVICES

1. Description of Services to be Performed
	1. Online Bidding/Vendor Management Service or Subscription

The Superior Court of California, Orange County (Orange Court) is seeking proposals from qualified parties to improve its compliance with the Judicial Branch Contract Law,[[1]](#footnote-1) (JBCL), services to ordering departments, and responsiveness to the vendor community.

The primary service being requested is an online bidding system to replace the existing online bidding system. The current system is utilized by the other superior courts, judicial branch entities (JBEs), the California Department of General Services (DGS), and other state agencies. As a result of the JBCL, JBEs must comply with many of the requirements placed upon California state agencies regarding public procurement practices. Therefore, a successful Contractor will be able to interface with the DGS website.

* 1. Ancillary Contractor Management Services

The Orange Court is also interested in any ancillary contractor management services including but not limited to:

* Insurance certificate management,
* Certification management, e.g. contractor certifications, business certifications,
* Public contracting code certifications such as Iran or Darfur certifications; and,
* Department of General Services (DGS) vendor status which includes the Disabled Veteran Business Enterprise (DVBE), Small Business (CA-SB) or Micro Business (CA-MB) programs, Delinquent Taxpayer Status, etc.
* Contract Management

Orange Court procures a wide variety of products and services to support its operations through the use of an online bidding system, which streamlines and expedites the procurement process, as well as maximizes participation, increases transparency and encourages competition in the award of Orange Court contracts

* 1. General Description

Orange Court issued RFP No. 1310-002 to provide information technology products, services and pricing for a replacement Online Bidding Service and an optional integrated Contract Management Database System (CMDS) for various Judicial Branch Entities (JBEs) and other state agencies in California. For those participating entities that so elect, Contractor agrees:

to provide software subscriptions/license(s), implementation and deployment services, data conversion capability, hardware, network and desktop assessment with recommendations to ensure that an adequate desktop and network infrastructure is in place to support the proposed solution(s);

to provide training for all personnel who may utilize the system;

to develop an Online Bidding Solution and Contract Management System that has the ability to interface with the DGS to provide efficient service to the contracting Participating Agency;

all as further described in this Exhibit C, Scope of Service and in each agency’s Participation Agreement to provide ongoing software application maintenance and support services (collectively, “Services”).

Contractor agrees to enter into a separate, individualized subscription/software license and implementation services agreement (hereinafter called a “Participation Agreement”) with the Participating Agency for the providing of Services to an individual Participating Agency -- based on and consistent with this MSA prior to system implementation in any individual Participating Agency.

* 1. Scope of the Work - Products and Specifications

The Contractor shall provide all online bidding and contract management subscription services, software, licensing, implementation services, data conversion, network and infrastructure recommendations, maintenance and support and alternative hosting solutions. Contractor shall perform the Services as described in this MSA, the Scope of Services, and Attachment A “Scope of Work” of this RFP. Except as set forth in the Scope of Services, Contractor is responsible for providing all facilities, materials and resources (including personnel, equipment and software) necessary and appropriate for delivery of the Services and to meet Contractor’s obligations under this MSA.

* + 1. **Implementation of an Online Bidding and CMDS Applications includes:**
			1. Provide Online Bidding/CMDS application software or services meeting the general requirements as provided in Attachment C of Scope of Work for all sizes of participating a Participating Agency as described in RFP No. 1310-002 including the following components: database security, ability to interface with DGS, Delinquent Tax Payers list, other public contract code requirements, a web-based public-facing portal, and optionally an integrated Document Management System (DMS).
			2. An analysis of the Participating Agency’s operations to effectively implement the Online Bidding/CMDS application(s) or services.
			3. Install, configure and test the selected Online Bidding/CMDS application(s) according to the business rules and processes of the Participating Agency to produce a high performance Online Bidding/CMDS system.
			4. Configurable workflow to actively process associated bid and contract documents using automated and manual work queues to maximize productivity and efficiency.
			5. An Online Bidding/CMDS service configured to be current with California laws, federal regulations, rules of court, the Public Contract Code, and administrative requirements.
			6. Maintain and support the Online Bidding/CMDS application(s) for changes in statutory and regulatory requirements, application enhancements, common configuration changes, and fixing program defects.
			7. Scalable system to accommodate court size, court users, data volume, and public web users.
			8. Full statewide (e.g., DGS, Delinquent Taxpayer, DVBE status , etc.) data exchange and interface integration as per Public Contract Code requirements.
		2. **Participating Agency Network Infrastructure includes:**
			1. Desktop assessment with hardware and software recommendations.
			2. Network assessment and design specifications for network security and bandwidth specification to adequately handle anticipated networking loads and access for the Online Bidding/CMDS application(s) proposed solution.
			3. Integration support for the network infrastructure to function with the Online Bidding/CMDS application(s).
			4. Data Integration support ensuring connectivity for Public Contract Code interfaces (DGS).
		3. **Hosting Solution includes:**
			1. Integrating the Online Bidding/CMDS application(s) servers and network servers with the network infrastructure and desktop workstations.
			2. Document Management Services (DMS) including any additional hardware and third party software recommendations and assisting in DMS scanners setup, configuration and business use. (Optional, depending on the Participating Agency's needs)
			3. Systems management (administration, change management, security, data recovery, and disaster recovery).
		4. **Online Bidding/CMDS Application(s) Software License**

Contractor will provide any and all applicable software licenses in order to operate the Online Bidding/CMDS Application(s) at a cost equal to or lower than the cost Contractor submitted in its response to RFP No. 1310-002.

* + 1. **Ongoing Software Application Maintenance and Support Services**

Contractor will provide ongoing software application maintenance and support services throughout the term of this MSA at a cost equal to or lower than the cost Contractor submitted in its response to RFP No. 1310-002.

* 1. Implementation and Deployment Services

All Implementation and Deployment Services requirements as stated in the RFP 1310-002.

* 1. Maintenance and Support includes:
		1. Application Software Licensing.
		2. Application Support and Technical Support.
		3. End-user and technical support.
		4. Provision of periodic maintenance, legislative updates, and security upgrades per service-level standards and support MSAs.
		5. Global Configuration changes necessary to support business changes
		6. Emergency support for break-fix situations
	2. Certifications and Verifications

All products provided by Contractor to the Participating Agency under this MSA must be compliant with all standards and regulations required by all federal agencies and state and local governmental entities.

* 1. Guarantee and Warranty

All equipment shall be guaranteed by the manufacturer to be new and to perform to the manufacturer’s specifications, and Contractor shall transfer to Participating Agency without limitation the manufacturer’s warranty which shall warrant the equipment against defects in material and workmanship.

All services shall be provided by Contractor consistent with the terms and conditions of the MSA including its General Terms and Conditions, (Exhibit A-1).

* 1. Installation

All products ordered by the Participating Agency under the MSA which require installation shall, as soon as possible after delivery, be completely installed and acceptance tested for functionality by the Contractor. The Contractor shall schedule installation directly with the individuals designated by the Participating Agency member placing the order prior to delivery.

* 1. Training
		1. The Contractor shall submit a training plan outlining the details of a customer training program. The program shall include preparing the Participating Agency sites to install, access, and run the Online Bidding/CMDS application(s) as well as training local trainers and training the user community. The training shall assist the Participating Agency members on the operational aspects of using the Online Bidding/CMDS application(s), and shall include, but not be limited to, instructions on how to operate the functions, best practices, user tips and tricks, how to read the screens or dashboards and how to set-up viewing screens or dashboards for different uses.
		2. Training personnel provided by Contractor shall possess all requisite skills and knowledge to perform the training.
	2. Onsite Maintenance Services and Support
		1. The Contractor shall provide a minimum of three (3) continuous years of maintenance services and support for the product as further described in RFP 1310-002 Attachment A “Scope of Work” and in this Attachment C of this MSA, which shall commence as provided therein.
		2. The Contractor shall provide telephone and email support to handle all requests and questions related to maintenance services and support as further provided in RFP 1310-002 Attachment A “Scope of Work” and in this Attachment C of this MSA.
		3. Contractor Contact Information Service and Technical Support

Contract Name:

Telephone:

FAX:

Email: *helpdeskt@XXXX.com*

* 1. Reports

Contractor must provide to the Project Manager, in a form acceptable to Orange Court, quarterly reports which include a list of products that are manufacturer discontinued within the quarter reported or are scheduled to be manufacturer discontinued within the next twelve- (12) month period. The report must include a proposed replacement product for any product that is manufacturer discontinued, as well as pricing for the proposed replacement. Additionally, the quarterly report must provide a summary, by Participating Agency, of the products and Services ordered, including the total value ordered during the quarter reported. The quarterly report must also include maintenance services and support coverage or extended maintenance services and support dates for each Participating Agency contract. Quarterly reports must be provided to the Orange Court no later than thirty (30) days after the end of each calendar quarter and must include purchases that are invoiced or paid for with a credit card.

1. Implementation/Configuration Services

The implementation/configuration requirements will be further outlined in each Participating Agency’s Participation Agreement.

1. Packaging of Hardware

All products must be delivered in the manufacturer’s standard packaging. Prices shall include all packing and/or crating charges. Cases shall be of durable construction, good condition, properly labeled and suitable in every respect for storage and handling of contents.

Each shipping carton shall be marked with the commodity, brand, quantity, item code number and the Individual Courts member’s Purchase Order number as well as the name and phone number of Contractor’s representative who will be installing the equipment.

Each shipment shall include a packing slip showing the Purchase Order number, the ordering date, ordering department (if appropriate), ship-to location, the item number, product description, serial numbers, quantity ordered, quantity shipped and backordered items including the expected ship date.

1. Delivery and Acceptance of Software and Deliverables

It is the responsibility of the Contractor to contact the Participating Agency to arrange for the installation of the licensed software, any and all deliverables and developed Works in accordance with the Project Plan in the Implementation/Deployment/Configuration requirements as delineated in the Participation Agreement.

1. Rejection of Goods or Acceptance of Service

The Contractor shall arrange for the return of all mis-ordered, mis-shipped, returned or damaged items at no cost to the Individual Courts member. There will be no restocking fee for returns of items that are damaged or shipped by the Contractor in error. The Contractor shall not charge the Participating Agency for the return of any mis-ordered, mis- shipped or damaged items.

***END OF EXHIBIT C***

# EXHIBIT D: SAMPLE PARTICIPATION AGREEMENT

[The sample Participation Agreement is attached to RFP 1310-002 as Attachment H]

**END OF EXHIBIT D**

***END OF MASTER SERVICE AGREEMENT***

1. On March 24, 2011, Senate Bill 78 was enacted creating a new [Part 2.5](http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pcc&group=19001-20000&file=19201-19210) of the Public Contract Code (PCC) designated the California Judicial Branch Contract Law (JBCL). [↑](#footnote-ref-1)