

Attachment 8
Non-Disclosure Agreement
for
Request for Proposal – California Courts Protective Order Registry Development

THIS CONFIDENTIALITY AGREEMENT (“Agreement”), effective as of _____ [*date of company’s signed proposal*] (“Effective Date”), is entered into by and between the Administrative Office of the Courts (the “AOC”) and [*company name*], a [] corporation, with its principal address at [*complete address*], (hereinafter the “Company”).

WHEREAS, the State of California, acting through the Judicial Council of California, Administrative Office of the Courts is planning to disclose certain confidential information to potential vendors who wish to bid on the Request for Proposal for Judicial Council of California Administrative Office of the Courts (AOC) for California Courts Protective Order Registry Development, including all Statements of Work, dated on or about April, 2009 (collectively, the “RFP”);

WHEREAS, each potential vendor who wishes to submit a response to the RFP must have access to that confidential information in order to construct a response to the RFP, including a bid; and

WHEREAS, the AOC requires each potential vendor identified to receive the RFP to sign this Confidentiality Agreement and return it to the AOC as a condition of receiving the RFP;

NOW THEREFORE, in consideration of the promises and of the mutual promises and agreements herein contained, it is agreed by and between the parties hereto as follows:

1. Company agrees that all information, documents, data, materials and the AOC proprietary software systems disclosed to, or accessed by, Company in connection with, or related to, the RFP or the RFP process, in any form whether oral or written, or in any medium, including but not limited to any of the following is “Confidential Information” under the terms of this Agreement:
 - a. The subject matter described in, and referred to, in the RFP, its associated Statements of Work (“SOWs”) or any other attachments, or during the RFP process (collectively “AOC Requirements”);
 - b. The RFP document (including all attachments), its content, and all supporting data, materials and all other information provided to Company in any form or medium in or in relation to the AOC’s RFP;
 - c. Any information, data, document or material concerning or related to the AOC Requirements, including but not limited to the AOC Requirements described in the RFP, SOWs, and all subsequent information, data, document or materials that may be provided to Company from time to time during the RFP process, including but not limited to any information, data, document or materials provided during or in response to any questions from Company or another recipient of the RFP;

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- d. The SOW documents (including all attachments), their content, and all supporting data, materials and all other information provided to Company in any form or medium in relation to the AOC's RFP process;
 - e. All fees including base charges for services, ARC and RRC rates, termination fees, resource baseline, volume discounts, new service rates, and skill categories for services;
 - f. Any information, data, document or material provided to Company in any form or medium to conduct any capability test pilot or demonstration, whether at the Company's facilities or the AOC's facilities;
 - g. Description of the AOC's finance, information technology, engineering and purchasing activities;
 - h. The AOC's objectives and strategies, including without limitation, the AOC's direction and the AOC's sourcing objectives;
 - i. The AOC's standards, policies, procedures and methodologies;
 - j. The AOC's volume information provided in the RFP;
 - k. Any and all other information, data or materials that Company receives access to or obtains in connection with onsite visits, meetings or in any other forms of communication whether oral or written with AOC personnel and contractors; and
 - l. Any and all other information, data or materials learned by Company through inspection of the AOC's property regarding the AOC's products, designs, business plans, strategies or processes, business opportunities, procurement or supply business plans, strategies or process, sales or marketing plans, strategies or processes, technical plans, strategies, or architecture, financial plans, strategies or processes, research, development, know-how, personnel, or third-party confidential information disclosed to Company by the AOC.
2. All Confidential Information disclosed by the AOC to Company shall be received in confidence by Company. Company agrees that it shall undertake all necessary and appropriate steps to ensure that the secrecy of the Confidential Information in its possession shall be maintained. Company also agrees that it shall treat the Confidential Information with not less than the same degree of care and confidentiality with which it treats its own confidential information, but in no event less than reasonable care. Company agrees that access to the Confidential Information shall be given by it only to

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- those of its employees who have a need to know to engage in the business relationship contemplated by this Agreement and who have signed a non-use and non-disclosure agreement in content at least as protective of the Confidential Information as the provisions hereof, prior to any disclosure of the Confidential Information to such employees.
3. Company shall not (i) use any portion of the Confidential Information for any purpose except to evaluate the RFP, including assessment of each Statement of Work under the RFP, in order to prepare its response to the RFP or (ii) disclose the Confidential Information or any part of it to any third party without the prior written consent of the AOC; provided, however, that Confidential Information shall not include any information of the AOC that: (a) is already properly known to Company at the time of its disclosure as shown by the Company's files and records immediately prior to the time of disclosure by the AOC to Company; (b) is publicly known through no action or inaction of Company; (c) is received from a third party free to disclose it to Company; (d) is independently developed by the Company without use of or reference to the Confidential Information, as shown by documents and other competent evidence in the Company's possession; or (e) is communicated to a third party with express written consent of the AOC. Nothing in this Agreement shall prevent the Company from disclosing Confidential Information to the extent the Company is lawfully required to be disclosed to any governmental agency or is otherwise required to be disclosed by law, provided that Company gives the AOC prompt written notice of such requirement before making such disclosure and Company gives the AOC an adequate opportunity and assistance to interpose an objection or take action to assure confidential handling of such Confidential Information.
 4. All Confidential Information, and any Derivative of it, whether created by the AOC or Company, remains the property of the AOC and no license or other rights to Confidential Information is granted to Company. For the purpose of this Agreement, "Derivative" means: (i) for copyrightable or copyrighted material, any translation, abridgment, revision or other form in which an existing work may be recast, transformed or adapted, (ii) for patentable or patented material, any improvement or enhancement of it; and (iii) for material which is protected by trade secret, any new material derived from existing trade secret material, including new material which may be protected by any of the following: copyright, patent or trade secret.
 5. Except as otherwise provided in any future agreement, at any time, Company agrees that it shall return to the AOC upon request all documents, records, notebooks, computer media or other stored information of any form or type whatsoever containing any Confidential Information, including all copies thereof, then in its possession or control (directly or indirectly), whether prepared by it or others and it shall at such time immediately discontinue all

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use of the Confidential Information.

6. Nothing in this Agreement is intended to grant any rights to either party under any patent or copyright rights, nor shall this Agreement grant to any rights in or to the Confidential Information, except as expressly set forth herein.
7. Any software and other technical information disclosed under this Agreement may be subject to restrictions and controls imposed by the Export Administration Act, Export Administration Regulations and other laws and regulations of the United States and any other applicable government or jurisdiction, as enacted from time to time (the "Acts"). Each party agrees to comply with all restrictions and controls imposed by the Acts.
8. ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". THE AOC MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING ITS ACCURACY, COMPLETENESS, FITNESS FOR A PARTICULAR PURPOSE, OR PERFORMANCE.
9. The parties acknowledge and agree that the Confidential Information and rights related thereto being protected by the AOC hereunder are of a special, unique, unusual and extraordinary character, which gives them a peculiar value, the loss of which may not be adequately or reasonably compensated for in damages in an action at law, and further agree that the breach by Company of any of the provisions of this Agreement shall cause the other party irreparable injury and damage. In such event, the party alleging breach of this Agreement shall be entitled, as a matter of right, without further notice, to require of the other party specific performance of all of the acts and undertakings required of the other party hereunder and to obtain injunctive and other equitable relief in any competent court to prevent the violation or threatened violation of any of the provisions of this Agreement by the other party. Neither this provision nor any exercise by either party of its rights to equitable relief or specific performance herein granted shall constitute a waiver by either party of any other rights which it may have to, damages or otherwise. If either party brings suit to enforce the terms hereof, the successful party in such suit shall be entitled to receive all of its reasonable costs of litigation, including attorneys' fees.
10. If any provision of this Agreement is declared void, or otherwise unenforceable, to any extent, the parties shall endeavor in good faith to agree to such amendments that shall preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such provision shall be deemed to have been severed from this Agreement, which shall otherwise remain in full force and effect.
11. Company warrants and represents that the individual who signs this

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Agreement for Company below has all requisite power and authority to enter into this Agreement on behalf of Company and to bind Company.

12. This Agreement contains the sole and entire agreement between the parties relating to the subject hereof and any representation, promise or condition not contained herein, or any amendment hereto or waiver hereunder shall not be binding on either party unless in writing and signed by an authorized representative of the party to be bound thereby.
13. This Agreement and all rights and obligations hereunder shall inure to and be binding upon the parties hereto and their respective successors, affiliates, agents, employees and assigns. Neither party may assign any of its rights or obligations hereunder without the prior written consent of the other party. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California without regard to choice of law principles.
14. This Agreement shall survive until such time as all Confidential Information disclosed hereunder becomes publicly known and made generally available through no action or inaction of Company. Except as otherwise provided in any future agreement, either party may terminate this Agreement by written notice to the other. Notwithstanding any such termination, all rights and obligations hereunder shall survive with respect to Confidential Information disclosed prior to such termination.
15. The State of California, acting through the Judicial Council of California, Administrative Office of the Courts, is an intended third party beneficiary of this Agreement and shall have the right to enforce provisions of this Agreement directly against Company.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

Administrative Office of the Courts

By: _____
Name: _____
Title: _____

[Company]

By: _____
Name: _____
Title: _____