**ATTACHMENT H**

**SAMPLE PARTICIPATION AGREEMENT**

**The Sample Participation Agreement will be the agreement template used by other judicial branch entities (JBEs), state agencies, etc. when contracting for services procured under this solicitation. Each JBE, state agency, etc. will be responsible for negotiating their own participation agreement.**

**Bidder must indicate if they accept the Sample Participation Agreement as is, or if the Bidder takes any exceptions/clarifications.**

*Mark the Appropriate Choice, below:*

Bidder accepts the: Sample Participation Agreement included with this solicitation including all of its Terms and Conditions without exception.

**OR**

Bidder proposes any exceptions/modifications to the Sample Participation Agreement.

*DIRECTIONS: If Bidder indicates the 2nd choice above, Bidder must provide a list and rationale for any and all exceptions to the Sample Participation 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.

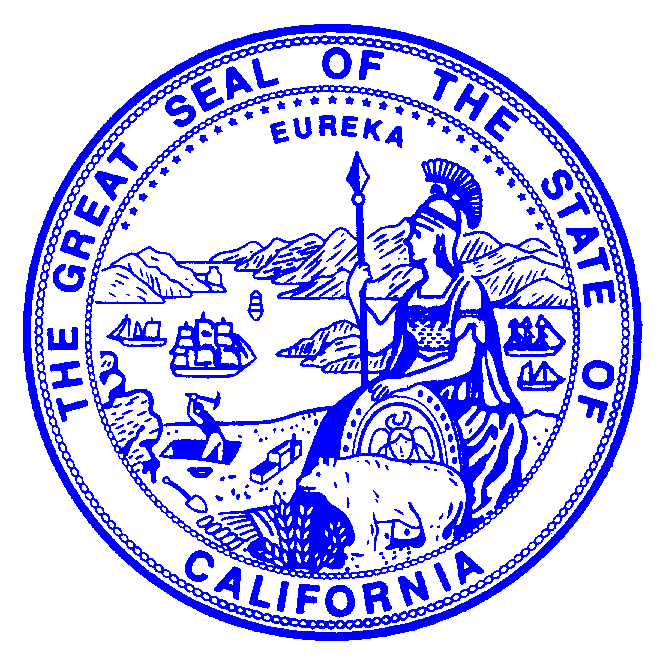
(Signature) (Email)

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)



**PARTICIPATION AGREEMENT FOR AN**

**ONLINE BIDDING SYSTEM AND ANCILLARY SERVICES**

**BETWEEN**

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

**AND**

**NAME OF CONTRACTOR**

**AGREEMENT #**

|  |  |
| --- | --- |
| Agreement Number  TBD | PO Number  TBD |
| TAXPAYER’S FEDERAL EMPLOYER IDENTIFICATION NUMBER  TBD | |

Superior Court of California, County of Orange

**SAMPLE PARTICIPATION AGREEMENT**

This Agreement is made between **Contractor Name, Contractor Address, State, Zip**, hereafter (“Contractor”) and the Participating Agency, an entity of the State of California, hereafter (“Participating Agency”).

**Background**

1. Participating Agency has a need for an Online Bidding System and Ancillary Services.
2. Contractor submitted a proposal in response to the Superior Court of California, Orange County’s (“Orange Court” 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 Agreement 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 Work;

Exhibit D-1, Work Order Authorization Process;

Exhibit D-2, Services Request Form;

Exhibit D-3, Work Order Form;

Exhibit E, Acceptance and Sign-Off Form;

Exhibit F, Travel Guidelines for JBEs;

Exhibit G, Application and Consent to Perform Background Check; and,

Exhibit H; Master Services Agreement.

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

Exhibit A-1, General Terms and Conditions;

Exhibit A-2, Supplemental Terms and Conditions;

Exhibit B, Payment Provisions;

Exhibit D-1, Work Order Authorization Process;

Exhibit D-3, Work Order Form;

Exhibit D-2, Services Request Form;

Exhibit C, Scope of Work;

Exhibit E, Acceptance and Sign-Off Form;

Exhibit H; Master Services Agreement;

Exhibit G; Application and Consent to Perform Background Check; and,

Exhibit F, Travel Guidelines for JBEs.

1. **Participation Agreement and Master Services Agreement (MSA) Conflicts and Ambiguities.** To the extent of any conflict between the MSA (attached as Exhibit H to this Participation Agreement) and the terms of this Participation Agreement, the terms of this Participation Agreement shall be controlling. Notwithstanding the foregoing, the terms and conditions this Participation Agreement shall be read to be complementary and supplementary to the aforementioned 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 the aforementioned MSA, this Participation Agreement shall control as it relates to the parties.
2. **Term and Effective Date of Agreement.** Any Amendments, starting with the most recent, shall take precedence over the existing Agreement. The Term of this Agreement 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 Agreement.

This Agreement 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 Agreement is fully executed and Participating Agency is in possession of a Court accepted Certificate of Insurance as required.

1. **Contract Amount.** As set forth further in Exhibit B, Payment Provisions, the Contract Amount shall not exceed not exceed **xxxxxxxxxx and no/100 ($XXXX.XX)**.

No guarantee is given as to any estimated usage amount. As set forth in this Agreement, Contractor agrees to provide the Work as specified, as needed by the Court, at prices listed upon this Agreement regardless of service usage.

1. **Signatures.**

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

|  |  |
| --- | --- |
| **Participating Agency** | **Contractor Name** |
| Signature: | Signature: |
| Name:  Alan Carlson | Name: |
| Title:  Chief Executive Officer | Title: |
| Date: | Date: |

***End of Contract Cover Sheet***

**TABLE OF CONTENTS**

[EXHIBIT A-1: GENERAL TERMS AND CONDITIONS 7](#_Toc378337946)

[1. Participation Agreement 7](#_Toc378337947)

[2. Definitions. 7](#_Toc378337948)

[3. Availability of Funds. 12](#_Toc378337949)

[4. Changes in Work; Stop Work. 12](#_Toc378337950)

[5. Consideration. 13](#_Toc378337951)

[6. Contractor Status. 13](#_Toc378337952)

[7. Contractor’s Personnel. 15](#_Toc378337953)

[8. Counterparts. 16](#_Toc378337954)

[9. Default and Remedies. 16](#_Toc378337955)

[10. Delinquent Taxpayer Code. 17](#_Toc378337956)

[11. Dispute Resolution. 17](#_Toc378337957)

[12. Indemnity. 18](#_Toc378337958)

[13. Infringement Protection. 18](#_Toc378337959)

[14. Insurance Requirements; Required Coverage. 18](#_Toc378337960)

[15. Intellectual Property. 21](#_Toc378337961)

[16. Limitation of Liability. 21](#_Toc378337962)

[17. Modification. 21](#_Toc378337963)

[18. Notices. 21](#_Toc378337964)

[19. Scope of Work; Delivery; Acceptance. 21](#_Toc378337965)

[20. Services and Deliverables. 22](#_Toc378337966)

[21. Standard of Performance; Warranties. 22](#_Toc378337967)

[22. Survival. 23](#_Toc378337968)

[23. Termination. 23](#_Toc378337969)

[24. Cancelation Rights. 25](#_Toc378337970)

[25. Time is of the Essence. 25](#_Toc378337971)

[26. Travel Guidelines. 25](#_Toc378337972)

[27. Entire Agreement. 25](#_Toc378337973)

[EXHIBIT A-2: SUPPLEMENTAL TERMS AND CONDITIONS 26](#_Toc378337974)

[1. Data and Security. 26](#_Toc378337975)

[2. Four-Digit Date Compliance. 26](#_Toc378337976)

[3. Intellectual Property. 26](#_Toc378337977)

[4. Malicious Code. 27](#_Toc378337978)

[5. Progress Reports. 27](#_Toc378337979)

[6. Third Party 27](#_Toc378337980)

[EXHIBIT B: PAYMENT PROVISIONS 28](#_Toc378337981)

[1. Contract Amount. 28](#_Toc378337982)

[2. Taxes. 28](#_Toc378337983)

[3. Invoicing Requirements. 28](#_Toc378337984)

[4. Payment. 29](#_Toc378337985)

[5. Pricing / Rate Sheet/Bill Rate. 30](#_Toc378337986)

[6. Final Payment. 30](#_Toc378337987)

[7. Release of Claims. 30](#_Toc378337988)

[EXHIBIT C: SCOPE OF WORK 31](#_Toc378337989)

[EXHIBIT D-1: WORK ORDER AUTHORIZATION PROCESS 32](#_Toc378337990)

[EXHIBIT D-2: SERVICES REQUEST FORM 35](#_Toc378337991)

[EXHIBIT D-3: WORK ORDER FORM 37](#_Toc378337992)

[EXHIBIT E: ACCEPTANCE AND SIGN-OFF FORM 38](#_Toc378337993)

[EXHIBIT F: TRAVEL GUIDELINES FOR JBE 39](#_Toc378337994)

[1. Lodging. 39](#_Toc378337995)

[2. Meals. 39](#_Toc378337996)

[3. Incidental Expenses. 39](#_Toc378337997)

[4. Transportation. 40](#_Toc378337998)

[5. Other Business Expenses. 40](#_Toc378337999)

[EXHIBIT G: APPLICATION AND CONSENT TO PERFORM BACKGROUND CHECK 41](#_Toc378338000)

[EXHIBIT H: MASTER SERVICES AGREEMENT 42](#_Toc378338001)

# EXHIBIT A-1: GENERAL TERMS AND CONDITIONS

## Participation Agreement

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 this MSA and Applicable Law shall have no force or effect.

## Definitions.

### **Acceptance:** means the written acceptance issued to Contractor by the Court’s Project Manager after Contractor has completed a Deliverable, in compliance with this Agreement, including without limitation, Exhibit C, Scope of Work.

### **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 the Participating Agency, and signed by both Contractor and the Participating Agency, 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 Participation Agreement, (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, 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 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.

### **Contract Amount:** total dollar amount of the Agreement.

### **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 Participation Agreement 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 this 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.

### **Data Safeguards:** industry-standard safeguards against the destruction, loss, misuse, unauthorized disclosure, or alteration of the Participating Agency Data or Confidential Information, and such other related safeguards that are set forth in Applicable Laws, a Statement of Work, or pursuant to Participating Agency policies and procedures.

### **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.

### **Firm Fixed Price:** means a single fixed amount or amounts designated as payment for a Deliverable or Deliverables.

### **Firm Fixed Price Basis:** means that the Contractor shall receive, as full and complete compensation for the provision of Deliverable(s), Firm Fixed Price(s), which shall constitute complete compensation for all costs, expenses, and efforts incurred by Contractor in provision of Deliverable(s).

### **Hourly Basis:** means that Contractor shall be paid at an hourly rate for each hour of authorized Work actually performed.

### **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**: refers to the Supreme Court, each Court of Appeal, each superior court, the Judicial Council, and the Administrative Office of the Courts. 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.

### **Malicious Code:** any (i) program routine, device or other feature or hidden file, including any time bomb, virus, software lock, Trojan horse, drop-dead device, worm, malicious logic or trap door that may delete, disable, deactivate, interfere with or otherwise harm any of the Participating Agency’s hardware, software, data or other programs, and (ii) hardware-limiting, software-limiting or services-limiting function (including any key, node lock, time-out or other similar functions), whether implemented by electronic or other means.

### **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, Orange County, and was the issuing agency for the Master Services Agreement.

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

### **Participation Agreement:** this 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 an agreement with the Contractor under the 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 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”, Participating Agency executing this Agreement, 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 Orange Court.

### **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 Exhibit C, Scope of Work, and any incidental services or responsibilities that are reasonable and customary in the industry and not specifically described in this Participation 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 this Agreement, as agreed to by both parties.

### **Stop Work Order**: written notice to Contractor from Participating Agency, directing Contractor to stop performance of Work for a period of ninety (90) days following delivery of the order to Contractor, or for a longer period by mutual agreement of the parties.

### **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 Date:** has the same meaning as “Expiration Date” unless this Agreement 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.

### **Work Order:** refers to a document, substantially in the form of Exhibit D-3, Work Order Form, which is used by the Court to order professional services to this Agreement.

### **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.

### **Ownership.** The Participating Agency is the exclusive owner of all materials collected and produced in connection with the Services. Upon the Termination Date (subject to any mutually agreed period of continuation of Services), or upon the Participating Agency’s notice at any time, and subject only to the duty of confidentiality owed to a represented party, Contractor shall give original materials to the Participating Agency or to another party at the its discretion. Contractor shall maintain all other materials in an accessible location and condition for a period of not less than four (4) years after the later of:

#### Contractor’s receipt of final payment under this Participation Agreement; and

#### The Participating Agency’s resolution with Contractor of findings of any final audit.

#### Any interest of Contractor in data, products, recordings, writings, or services of any kind prepared by Contractor for performance of services under this Participation Agreement shall become the property of the Participating Agency. Upon the Participating Agency’s written request, Contractor shall provide the Participating Agency with all such data, products, recordings, writings, etc., within thirty (30) days of the request.

### **Retention of Records.** Contractor will maintain all financial Data, supporting documents, and all other records relating to performance and billing under this 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.

## Availability of Funds.

The Participating Agency’s obligation to compensate Contractor is subject to the availability of funds. The Participating Agency shall notify Contractor if funds become unavailable or limited during the Term.

## Changes in Work; Stop Work.

### **Changes in Work.**

#### Participating Agency reserves the right to require Contractor to make changes in the Work, as set forth in Exhibit C, Scope of Work, which may include additions, deletions, or modifications to the Work, or changes in the timing or level of effort for the Work.

#### For any change proposed by Participating Agency or Contractor, Contractor will submit in writing:

#### A description of the proposed change and the reasons for the change;

#### A summary of the total compensation to be paid Contractor with a breakdown of tasks and costs, including any reduction in Work or costs resulting from the change; and

#### A statement of the expected impact on schedule.

### If Participating Agency and Contractor agree on a change, Participating Agency will issue an Amendment documenting the change, for the parties’ execution.

### If the parties cannot agree to the terms of a change, Contractor will proceed diligently with Work unless otherwise directed by Participating Agency, and any continuing disagreement will follow the process set forth in the provisions entitled “Dispute Resolution.” Contractor should not proceed with any change prior to receiving a written directive or Amendment from Participating Agency. All costs for changes performed by Contractor without Participating Agency’s prior written approval will be at Contractor’s sole risk and expense.

### **Stop Work.**

#### Participating Agency may, at any time, by delivery of a written Stop Work Order to Contractor, require Contractor to stop any or all of the Work, for ninety days after the Stop Work Order is delivered to Contractor, and for any further period to which the parties may agree.

#### Upon receipt of the Stop Work Order, Contractor will immediately comply with its terms and take all reasonable steps to minimize the costs incurred to Participating Agency during the applicable Stop Work period. Within ninety days after a Stop Work Order is delivered to Contractor, or within any mutually agreed extension of that period, Participating Agency will either cancel the Stop Work Order or terminate the Work, as provided in Section 23, Termination.

#### If a Stop Work Order is cancelled by the Participating Agency, or the period of the Stop Work Order or any extension thereof expires, Contractor will promptly resume Work covered by such stop work order. Participating Agency may make an equitable adjustment in the delivery schedule, the Contract Amount, Exhibit C, Scope of Work, or all, if (a) the Stop Work Order directly and proximately results in an increase in the time required for the performance of any part of the Scope of Work; and (b) Contractor asserts its right to such equitable adjustment within thirty (30) days after the end of the applicable Stop Work period.

#### If a Stop Work Order is not canceled and the Work covered by the Stop Work Order is terminated other than for cause, Participating Agency may allow reasonable costs resulting from the Stop Work Order.

#### Participating Agency will not be liable to Contractor for loss of profits because of any Stop Work Order.

## Consideration.

### Subject to the terms of this Agreement, Contractor shall invoice the Participating Agency, and the Participating Agency shall compensate Contractor, as set forth in Exhibit B, Payment Provisions. The consideration or Service Fees to be paid to Contractor under this Agreement shall be the total and complete compensation to be paid to Contractor for all Work performed under this Agreement, including all of Contractor's expenses incurred, such as travel and per diem expenses, unless otherwise expressly provided, as set forth in Exhibit B, Payment Provisions. Contractor shall bear, and the Participating Agency shall have no obligation to pay or reimburse Contractor for, any and all other fees, costs, profits, taxes or expenses of any nature which Contractor incurs.

### **Payment Does Not Imply Acceptance of Work.** Participating Agency’spayment will not relieve Contractor from its obligation to replace unsatisfactory Work, even if the unsatisfactory character of such Work may have been apparent or detected at the time such payment was made. Work, Data, or components that do not conform to requirements of this Participation Agreement will be rejected, and will be replaced by Contractor, without delay or additional cost to the Participating Agency.

### **Disallowance.** If Contractor receives payment from Participating Agency for a service or reimbursement that is later disallowed or rejected by the Participating Agency, Contractor will promptly refund the disallowed amount to the Participating Agency upon request. At its option, the Participating Agency may offset the amount disallowed from any payment due to Contractor, under the Participation Agreement or any other 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 Work, Contractor has no authority or responsibility to exercise any rights or power vested in the Participating Agency.

#### This Participation Agreement 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, the Participating Agency may terminate this Participation Agreement immediately upon Notice. Alternatively, Contractor may agree to a reduction in Participating Agency’s financial liability, so that the total cost under this Participation Agreement does not exceed the originally contemplated amount.

### **Contractor’s Employees.**

#### Contractor’s employees will be entirely and exclusively under the direction, supervision, and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring, and termination, or any other employment issues or requirements of law, will be determined by Contractor.

#### Contractor will issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's employees, consultants, and independent contractors.

#### If the Internal Revenue Service or any other federal or state governmental entity should investigate or challenge Contractor’s independent status with respect to the Participating Agency, the parties agree that (i) each will inform the other party of such investigation or challenge; and (ii) the Participating Agency will have the right, but not the obligation, to participate in any discussion or negotiation occurring with the federal or state entity, regardless who initiates such discussions or negotiations.

#### Contractor will indemnify and hold the 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.

### **Exclusive Control of Means and Method of Performance.**

Contractor will determine the method, details, and means of performing or supplying the Work under this Participation Agreement. Contractor will be responsible to the Participating Agency only for the requirements and results specified in this Participation Agreement and more particularly as set forth in Exhibit C, Scope of Work, and will not be subjected to the Participating Agency’s control with respect to the physical action or activities of Contractor in fulfillment of this Participation Agreement. Contractor will have the “right to control” and bear the sole responsibility for the job site conditions and safety.

### **Subcontracting.**

#### Contractor will not engage a Subcontractor to perform any portion of this Work, without the express written consent of the Participating Agency. Any subcontracting without the Participating Agency’s written consent is a material breach of this Participation Agreement.

#### Contractor warrants and represents that all Subcontractors will be subject to the same terms and conditions applicable to Contractor under this Agreement. Contractor will incorporate this Agreement as the prime agreement in any subcontracting relationship. Contractor will be liable for all Subcontractor acts or omissions, including indemnity obligations.

#### The Participating Agency may withdraw its approval of a subcontractor if the Participating Agency determines in good faith that the subcontractor is, or will be, unable to effectively perform its responsibilities. If the Participating Agency rejects any proposed subcontractor in writing, Contractor will assume the proposed subcontractor’s responsibilities. No subcontracting shall release Contractor from its responsibility for performance of its obligations under this Participation Agreement. Contractor shall remain fully responsible for the performance of Subcontractors hereunder, including, without limitation, all work and activities of Subcontractors providing services to Contractor in connection with the Services. Contractor shall be the sole point of contact with Subcontractors under this Participation Agreement, and Contractor shall be solely responsible for Subcontractors, including, without limitation, payment of any and all charges resulting from any subcontract. The Participating Agency’s consent to any subcontracting or delegation of Contractor’s obligations will take effect only if there is a written Agreement with the Subcontractor, stating that the Contractor and Subcontractor:

##### are jointly and severally liable to the Participating Agency for performing the duties in this Participation Agreement;

##### affirm the rights granted in this Participation Agreement to the Participating Agency;

##### make the representations and warranties made by the Contractor in this Participation Agreement; and,

##### appoint the Participating Agency as an intended third party beneficiary under Contractor’s written Agreement with the Subcontractor.

## Contractor’s Personnel.

### Contractor shall assign to this project only persons who have sufficient training, education, and experience to successfully perform Contractor’s duties. If the Participating Agency is dissatisfied with any of Contractor’s personnel, for any reason or no reason, Contractor shall immediately replace them with qualified personnel possessing equivalent or greater experience and skills. Contractor shall make commercially reasonable efforts consistent with sound business practices to honor the specific request of the Participating Agency with regard to assignment of its employees.

### Contractor shall provide sufficient staffing to adequately provide the Services.

### **Contractor Project Manager.** The Contractor Project Manager shall serve, from the Effective Date, as the Contractor project manager and primary Contractor representative under this Participation Agreement. The Contractor Project Manager shall (i) have overall responsibility for managing and coordinating the performance of Contractor’s obligations under this Participation Agreement, including the performance of all Subcontractors; and (ii) be authorized to act for and bind Contractor and Subcontractors in connection with all aspects of this Participation Agreement. The Contractor Project Manager shall respond promptly and fully to all inquiries from the Participating Agency’s Project Manager.

### For Contractor’s employees, Subcontractors, or agents performing work, and with access to Participating Agency’s systems (on-site or remotely) in the performance of their Work under this Participation Agreement, Participating Agency will have the right, but not the obligation, to request or conduct a background check, before granting access to Participating Agency’s premises or systems or at any other time. Background checks will be requested using “Application and Consent to Perform Background Check” attached hereto as Exhibit G and incorporated herein by this reference. Contractor shall cooperate with the Participating Agency if the Participating Agency wishes to perform any background checks on Contractor’s personnel by obtaining, at no additional cost, all releases, waivers, and permissions the Participating Agency may require. Contractor shall not assign personnel who refuse to undergo a background check. Contractor shall provide prompt notice to the Participating Agency of (i) any person who refuses to undergo a background check, and (ii) the results of any background check requested by the Participating Agency and performed by Contractor. Contractor shall remove from the Project Staff any person refusing to undergo such background checks and any other person whose background check results are unacceptable to Contractor or that, after disclosure to the Participating Agency, the Participating Agency advises are unacceptable to the Participating Agency.

### Granting or denying access will be at the sole discretion of the Participating Agency. The Contractor will receive a written response with a notification of “Approved” or “Denied” for the facility access for each individual. No background information will be released to the Contractor.

It is the responsibility of the Contractor to notify the Participating Agency of any additional staff or change in staff, to submit to the court a completed and signed Application and Consent for Background Check form for each person, and to receive authorization from the court before the individual begins to work in a court facility.

### Contractor and any subcontractor(s) shall provide certain Key Personnel as may be particularly identified in this Participation Agreement, the Scope of Work, etc. Contractor shall endeavor to minimize turnover of personnel Contractor has assigned to this project. Any additional personnel are subject to approval by the Participating Agency.

#### If any Key Personnel, through no cause or fault of Contractor, become unavailable to provide services under this Participation Agreement, Contractor shall immediately notify the Participating Agency in writing and provide replacement Key Personnel possessing equivalent or greater experience and skills. Contractor shall provide resumes for proposed replacement Contractor Key Personnel within two (2) Business Days after so notifying the Participating Agency.

### The Contractor Project Manager and the Participating Agency’s Project Manager shall work together to mitigate any impact on the schedule as set forth in a Statement of Work caused by any replacement of a Project Staff member. Contractor will be responsible for all costs associated with replacing personnel, including additional costs to familiarize replacement personnel with the Work. If Contractor does not promptly furnish replacement personnel acceptable to the Project Manager, the Participating Agency may terminate this Participation Agreement for cause.

### If this Participation Agreement provides for the payment of $5,000 or more for Consulting Services performed for Participating Agency, Contractor has attached to this Participation Agreement resumes of each Contractor participant who will exercise a major administrative role or major policy or consultative role.

### While at the Participating Agency’s Service Locations, Contractor shall, and shall cause Subcontractors to:

#### comply with the requests, standard rules and regulations and policies and procedures of the Participation Agency regarding safety and health, security, personal and professional conduct generally applicable to such Participating Agency locations;

#### otherwise conduct themselves in a businesslike manner.

### Contractor further shall enter into an Agreement with each of the members of the Project Staff which assigns, transfers and conveys to Contractor all of such Project Staff member’s right, title and interest in and to any Developed Works, including all Intellectual Property Rights in and to Developed Works.

## Counterparts.

This Participation Agreement(s) may be executed in counterparts, each of which is considered an original.

## Default and Remedies.

### **Default.** A default exists under this Participation Agreement if:

#### Contractor fails or is unable to meet for perform any of Contractor’s duties under this Participation Agreement, 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 Participation Agreement 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 Participation Agreement, (ii) ensure that these obligations are legal, valid, and binding, or (iii) make this Participation Agreement 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 Participation Agreement.

### **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 this 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 this Participation Agreement as provided below; and

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

### **Remedies Cumulative.** All remedies provided for in this 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 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 the 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 the Participating Agency’s obligation(s) to Contractor until such time as Contractor has been removed from the Delinquent Taxpayer list(s).

## Dispute Resolution.

Court and Contractor will attempt, in good faith, to resolve any disputes informally. Contractor will meet with Court’s Project Manager or other designated representative to discuss the matter and any actions necessary to resolve a dispute.

### **Escalation.**

#### If a dispute remains unresolved either party may give Notice requesting each party’s Chief Executive Officer (“CEO”) or designated representative to meet, exchange information and attempt resolution within fifteen days of the effective date of the Notice.

#### If the matter is not resolved as set forth in this Section 11. Dispute Resolution, the aggrieved party will submit a second Notice which will:

##### provide detailed factual information;

##### identify the specific provisions in this Agreement on which any demand is based;

##### advise if the demand involves a cost adjustment and, if so, provide the exact amount, accompanied by all supporting records; and

##### attach a declaration that the demand is made in good faith, the supporting data are accurate and complete, and the amount requested properly reflects the necessary adjustment. Notice will be signed by an authorized representative of the aggrieved party.

#### Each party will comply with reasonable requests for additional information. Any additional information will be provided within fifteen days after receipt of a written request, unless otherwise agreed.

### **Confidentiality During Dispute Resolution.** All dispute resolution negotiations are considered confidential, and will be treated as compromise and settlement negotiations, to which California Evidence Code § 1152 applies.

### **Continued Performance of Work.** Pending final resolution of any dispute, Contractor agrees to proceed diligently with the performance of the Work, including Work associated with the dispute, unless otherwise directed by Court. Contractor’s failure to diligently proceed in accordance with Court’s instructions will be considered a material breach of the Agreement.

## Indemnity.

Contractor shall indemnify and defend (with counsel satisfactory to the Office of the General Counsel), the Participating Agency and their personnel against all claims, damages, losses, and expenses, including attorney fees and costs, founded upon (i) Contractor’s performance of, or failure to perform, the Services or Contractor’s other duties under this Participation Agreement, or (ii) any other breach by Contractor of this Participation Agreement. 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 Court and its 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 Agreement.

## Insurance Requirements; Required Coverage.

### **General Insurance Requirements:** Contractor shall obtain, provide, and maintain at Contractor’s expense the minimum insurance set forth in this section with reputable insurer(s). All insurance policies shall be placed with insurers admitted in the State of California and having an A.M. Best rating of not less than A-: VIII.

### **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 this 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 this 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 this Participation Agreement and the Participating Agency’s acceptance of all Work provided under this 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 this 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.

### **Endorsements:** All Contractor policies will contain, or be endorsed to contain, the following provisions:

#### **Additional Insureds.** 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 when acting in the scope of their appointment or employment shall be covered as additional insureds for liability arising out of activities performed by, or on behalf of, Contractor under the terms of the Agreement.

Wording for the Additional Insured Endorsement shall be the following:

*“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 when acting in the scope of their appointment or employment are named as additional insureds on all above policies except workers’ compensation, professional liability, and crime insurance.”*

#### **Insurance Primary.** The insurance provided is primary insurance with respect to 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, and non-contributory with any insurance or self-insurance maintained by the Court. Any insurance and/or self-insurance maintained by 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 will not contribute with the insurance, or benefit Contractor in any way.

#### **Separation of Insureds.** The commercial general liability policy, or, if maintained in addition to that policy, the excess liability or umbrella liability policy, applies separately to each insured against whom a claim is made and/or a lawsuit is brought, except with respect to the limits of the insurer’s liability.

#### **Certificates of Insurance.** Prior to Contractor beginning any performance of the Work, Contractor shall provide the Court certificates of insurance satisfactory to the Court, attesting to the existence of coverage. Any replacement certificates of insurance are subject to the approval of the Court, and, without prejudice to the Court, Contractor shall not perform Work prior to Court’s approval of the certificates. Contractor must obtain and provide complete copies of each policy upon the Court’s request. If at any time, the foregoing policies become unsatisfactory to the Court, as to form or substance, or if a company issuing any such policy becomes unsatisfactory to the Court, Contractor shall, upon written notice from the Court, promptly obtain a new policy, and submit the same to the Court, with the appropriate certificates and endorsements, for Court approval.

##### Certificate(s) of Insurance shall be submitted to the Procurement Specialist listed in the Agreement, or listed in the Court solicitation document, in accordance with Notice requirements set forth in Section 18 below.

##### Certificate Holder name should read as follows: “Superior Court of California, County of Orange and County of Orange” and must reference Agreement No. XXXXX / PO No. XXXXX / Procurement Specialist’s Name.

##### Failure to Provide Certificates of Insurance. If Contractor fails to provide Certificate(s) of Insurance within seven (7) days of notification by the Court, award may be made to the next qualified Contractor(s).

#### Contractor shall provide Court with thirty (30) business day’s written notice of any non-renewal or reduction in coverage with respect to these policies. Such notice will be provided in accordance with Notice requirements set forth in the Agreement and must reference the relevant project, and Agreement number.

### **Waiver of Recovery or Subrogation.** Contractor and its insurance carrier waive any and all rights of recovery or subrogation against 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, agents and employees when acting in the scope of their appointment or employment. This waiver will be reflected on the Certificate of Insurance provided by Contractor in accordance with the following:

Wording for Waiver of Recovery or Subrogation shall be the following:

*“Waiver of recovery or subrogation in favor of 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, officer, agents and employees when acting in the scope of their appointment or employment applies to all policies as required by written contract.”*

### **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 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 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.

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 Participation Agreement, regardless whether the Participating Agency was advised of the possibility of such loss or damage. In no event will the Participating Agency’s liability for direct damages arising from or related to this Participation Agreement, for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, exceed the amounts paid to Contractor by Participating Agency under this Participation Agreement.

## Modification.

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

## Notices.

Notices under this Participation Agreement must be in writing and signed by an authorized representative of either party to this Participation Agreement, 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.

|  |  |
| --- | --- |
| **Participating Agency** | **Contractor** |
| Buyer Name | Contractor Contact Name |
| Title | Title |
| Address | Contractor’s Address |
| Phone: (XXX)XXX-XXXX | Phone: (XXX)XXX-XXXX |
| Email: [xxxxx@occourts.org](mailto:xxxxx@occourts.org) | Email: [xxxxxxxxxxxxx](mailto:Christopher_Criollo@bmc.com) |

### **Project Management.** The roles and responsibilities of the Court’s Project Manager(s) and the Contractor’s Project Lead, named below, are outlined in the Agreement.

|  |  |
| --- | --- |
| **Participating Agency’s Project Manager(s)** | **Contractor Project Lead** |
| Project Manager Name | Contractor Contact Name |
| Title | Title |
| Address | Contractor’s Address |
| Phone: (XXX)XXX-XXXX | Phone: (XXX)XXX-XXXX |
| Email: [xxxxx@occourts.org](mailto:xxxxx@occourts.org) | Email: [xxxxxxxxxxxxx](mailto:Christopher_Criollo@bmc.com) |

## Scope of Work; Delivery; Acceptance.

### **Scope of Work.** Contractor will perform and complete all Work described in Exhibit C, Scope of Work, in compliance with the requirements of this Agreement, and to the satisfaction of Court.

### **Delivery**. Contractor shall deliver to the Court the Deliverables in accordance with this Agreement.

### **Acceptance.**

#### All Work provided by Contractor under this Agreement is subject to written acknowledgement and acceptance by Court’s Project Manager. The Court’s Project Manager will apply the acceptance criteria set forth in Exhibit C, Scope of Work, (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, 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 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 19 until Contractor’s receipt of Court’s written acceptance of such corrected Work; provided, however, that if Court rejects any Work on at least two (2) occasions, Court may terminate that portion of this Agreement which relates to the rejected Work at no expense to Court.

#### If or when Contractor does not provide service(s) as specified, the Court may provide or contract with others to provide the service(s), and the amount payable under the Agreement shall be reduced by the cost to Court 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 Court rejects any Services or Work Product after payment to Contractor, the Court may exercise all contractual and other legal remedies, including (i) setting off the overpayment against future invoices payable by the Court, (ii) setting off the overpayment against any other amount payable for the benefit of Contractor pursuant to this Agreement or otherwise, and (iii) requiring Contractor to refund the overpayment within thirty (30) days of the Court’s request.

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

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

## Services and Deliverables.

### Services will be rendered with promptness and diligence and will be executed in a workmanlike manner, in accordance with the practices and professional standards used in well-managed operations performing services similar to the Services; and

### Contractor will use efficiently the resources or services necessary to provide the Services; and perform the Services in the most cost efficient manner consistent with the required level of quality and performance. Contractor represents and warrants that each Deliverable will conform to and perform in accordance with the requirements of this Participation Agreement and all applicable Specifications and Documentation. For each such Deliverable, the foregoing representation and warranty in this section shall commence for such Deliverable upon the Participating Agency’s acceptance of such Deliverable, and shall continue for a period of one (1) year following Acceptance. In the event any Deliverable does not conform to the foregoing provisions of this section, Contractor shall promptly correct all non-conformities.

## 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 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 21 commence after Work has been approved and accepted by Participating Agency.

## Survival.

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

## Termination.

### **Termination for Cause.** 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 requires of the Agreement in the time and manner agreed. 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.**

#### The Participating Agency may terminate this 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 this 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 this 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 this Participation Agreement. Funding beyond the current Appropriation Year is conditioned upon appropriation of sufficient funds to support the activities described in this Participation Agreement.

#### Upon Notice, Participating Agency may terminate this 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 Agreement amount.

### **Termination due to Death, Permanent Incapacity.** This entire Participation Agreement 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 Agreement or a general partner of a partnership that is a party to this Agreement.

### **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.

## 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 23.1, Termination for Cause.

## Time is of the Essence.

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

## Travel Guidelines.

Contractor’s travel expenses are not reimbursable by the Court, unless the Agreement expressly indicates that the Court will reimburse such expenses in accordance with Exhibit F, Travel Guidelines for JBEs.

## Entire Agreement.

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

### This Agreement was negotiated between the parties, and neither party “prepared” this 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 Participation Agreement 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-1***

# EXHIBIT A-2: SUPPLEMENTAL TERMS AND CONDITIONS

## Data and Security.

### **Safety and Security Procedures.** Contractor shall maintain and enforce, at the Contractor Service Locations, industry-standard safety and physical security policies and procedures. While at each Participating Agency Service Location, Contractor shall comply with the safety and security policies and procedures in effect at such Participating Agency Service Location.

### **Data Security.** Contractor shall comply with the Data Safeguards. Contractor personnel and Subcontractors shall not attempt to access, and shall not allow access to the Court data and other Confidential Information that is not required for the performance of the Services by such personnel or Subcontractors. In the event Contractor or a Subcontractor discovers or is notified of a breach or potential breach of security relating to the Court data or other Confidential Information, Contractor shall promptly, at its own expense:

#### Notify the Court Project Manager of such breach or potential breach; and

#### If the applicable Court Data or other Confidential Information was in the possession of Contractor or Subcontractors at the time of such breach or potential breach, Contractor shall:

##### Investigate and cure the breach or potential breach; and

##### Take measures satisfactory to the Court to prevent such breach or potential breach from recurring.

### **Security Assessments.** At least once a year, or upon the Court’s request, Contractor shall, at its expense, perform, or cause to have performed an assessment of Contractor’s compliance with the safety and security policies set forth in this Agreement or any Statement of Work. Contractor shall provide to the Court the results, including any findings and recommendations made by Contractor’s assessors, of such assessment, and, at its expense, take any corrective actions. The Court and Court Contractors may, at the Court’s expense, perform the assessments described in this Section and “snap” assessments (e.g., safety and data/physical security assessments) of the Court Service Locations.

## Four-Digit Date Compliance.

If this Agreement is for the purchase of systems, software or instrumentation with imbedded chips, Contractor represents and warrants that it will provide only Four-Digit Date Compliant Deliverables and/or Services to the Court. “Four-Digit Date Compliant” Deliverables and Services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries.

## 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 this 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.

## Malicious Code.

No Deliverable will contain any Malicious Code. Contractor shall immediately provide to the Participating Agency written notice in reasonable detail upon becoming aware of the existence of any Malicious Code. Without limiting the foregoing, Contractor shall use best efforts and all necessary precautions to prevent the introduction and proliferation of any Malicious Code in the Participating Agency’s IT Infrastructure or networks or in the Contractor systems used to provide Services. In the event Contractor or the Participating Agency discovers the existence of any Malicious Code, Contractor shall use its best efforts, in cooperation with the Participating Agency, to effect the prompt removal of the Malicious Code from the Deliverables and the Participating Agency’s IT Infrastructure and the repair of any files or data corrupted thereby, and the expenses associated with the removal of the Malicious Code and restoration of the data shall be borne by Contractor. In no event will Contractor or any Subcontractor invoke any Malicious Code.

## Progress Reports.

As directed by the Court, Contractor must deliver progress reports or meet with Court personnel on a regular basis to allow: (i) the Court to determine whether the Contractor is on the right track and the project is on schedule, (ii) communication of interim findings, and (iii) opportunities for airing difficulties or special problems encountered so that remedies can be developed quickly. Third Party or Court Services.

## Third Party

Notwithstandinganything 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.

***END OF EXHIBIT A-2***

# EXHIBIT B: PAYMENT PROVISIONS

## Contract Amount.

The total amount the Court may pay to Contractor under this Agreement for performing all Work, as well as all Travel and Living Expenses and/or Reimbursable Expenses specified therein, shall not in any event exceed the Total Contract Value to Date specified on the cover sheet of this Agreement, Section 3, “Contract Amount” or exceed the amount authorized under each Work Order or Amendment.

## 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.

## Invoicing Requirements.

### **Invoice Procedures:**

After the Court has accepted Services and Work Product, Contractor will send one (1) original correct, itemized invoice for the accepted Services and Work Product to “Accounts Payable,” at the address shown below.

Invoices are to be submitted in arrears for the services provided and within thirty (30) days of the accepted Work. Billing shall cover services not previously invoiced. Invoices must be received within thirty (30) calendar days of completed, approved, and accepted Work or Work Product.

***Note: Upon completion of the Work, it is the responsibility of the Contractor to obtain written acceptance from the Court’s Project Manager, via Exhibit E, Acceptance and Sign-Off Form, for each completed project. A completed and signed copy of Exhibit E, Acceptance and Sign-Off Form must be obtained by the Contractor prior to submitting invoice(s) for request(s) for payment.***

### **Invoice Submittals:**

Invoices may be submitted either electronically via e-mail or hard copy submittal by mail, in accordance with the following instructions:

#### Electronic Submittal of Invoices

Contractors may submit Invoices electronically (PDF format) to the Court Accounting Services email address: [AccountingServices@occourts.org](mailto:AccountingServices@occourts.org). 

On the Subject Line of the e-mail, please reference Contractor Name, Invoice Number(s), Agreement Number, and Purchase Order Number. 

***Example:***

*Contractor Name. – Invoice # XXXXX – Agmt # xxxx - PO # xxxxxx*

OR

#### Hard Copy Submission of Invoices

Contractors may mail hard copy invoices to the Court’s PO box address if they choose not to submit them electronically.

Superior Court of California, County of Orange

Accounting Services (Reference PO. #xxxx)

P.O. Box 22002

Santa Ana, CA 92702

### **Invoice Instructions:**

Contractor will submit invoices on Contractor’s standard printed bill form. Contractor will include all back up documentation and receipts associated with each invoices. If requested, Contractor will promptly correct any inaccuracy and resubmit the invoice. Each invoice will include, at a minimum, the following:

1. Name and address of Contractor
2. Preferred remittance address, if different from the mailing address
3. Contractor’s federal taxpayer’s ID number
4. Agreement Number #xxxxxxx
5. Purchase Order # xxxxxxxxx
6. Unique invoice number
7. Total invoiced amount
8. Fixed price for each item, deliverable or expense, as applicable
9. Description of service(s) or deliverable
10. Location where service performed, if applicable
11. Date of service completion
12. Court Project Manager
13. Exhibit E; Acceptance and Sign Off-Form, if applicable
14. All other details the Court considers reasonably necessary to permit the Court to evaluate the Services performed and the Work Product delivered.

### **For Bill Rate Agreements,** Contractor shall invoice on by per the Bill Rate agreed to in Section 5 below. Contractor’s invoice(s) shall clearly indicate the Bill Rate and include all items in Section 3.3 “Invoice Instructions” plus the following:

### **For Time and Materials Not to Exceed Basis Work Provided on a Deliverables Basis,** Contractor shall invoice on successful acceptance of a Deliverable. Contractor’s invoice(s) shall clearly separate each deliverable and include all items listed above in Section 3.3 “Invoice Instructions” plus the following:

1. Names, Titles, Hours, Rates and Dates of Performance for all of Contractor or its Subcontractor employees for hours of Work actually incurred in providing that Deliverable during the previous calendar month, including a total for all such Work.
2. If the Court specifies that the Contractor is to be compensated for Travel and Living Expenses incurred in providing that Deliverable, the dates the expense was incurred, name of employee, and separate costs for air transportation, overnight lodging, and private vehicle ground transportation (include origin, destination, and miles claimed).
3. If the Court specifies that the Contractor is to be compensated for Reimbursable Expenses incurred in providing that Deliverable, the date the expense was incurred description of the expense, and amount of the expense.
4. A grand total for all hours, Travel and Living Expenses, and Reimbursable Expenses billed on the invoice, individually for each Deliverable and in total for the invoice, with a grand total.
5. Time and materials required
6. Any/all receipts for Contractor provided materials

## 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 this Participation Agreement.

## Pricing / Rate Sheet/Bill Rate.

[to be inserted upon contract execution]

## Final Payment.

The following conditions must be fulfilled prior to final payment:

### The Court must have accepted the Project as complete

### Contractor shall have delivered to the Court all applicable written guarantees and warranties, including those of its subcontractors, if applicable;

### The Contractor shall have delivered to the Court all applicable manuals;

### The Contractor must include signed original of Exhibit E, Acceptance and Sign-Off Form to Court.

The final payment shall be the amount of owed to Contractor, in accordance with this Agreement, less the following: (i) any amounts reasonably disputed by the Court; (ii) one hundred fifty percent (150%) of the Court’s estimate of any amount necessary to complete any Punch List Items which are still not complete; (iii) any amounts attributable to stop notices which the Court is required to withhold under California law (i.e. Civil Code Sections 3181 et. seq.).

## Release of Claims.

The acceptance by the Contractor of its final payment due under this Agreement shall be and shall operate as a release to the State Entities, County of Orange, and the Court of all claims and all liability to the Contractor for everything done or furnished in connection with this Agreement (including every act and neglect of the Court), with the exception of any claims that are expressly identified by the Contractor as outstanding as of the date of Contractor’s submission of Contractor’s final application for payment. Contractor’s failure to identify any such claims shall operate as a release of all claims.

***END OF EXHIBIT B***

# EXHIBIT C: SCOPE OF WORK

[Intentionally left blank. The Scope of Work will be inserted upon contract execution.]

***END OF EXHIBIT C***

# EXHIBIT D-1: WORK ORDER AUTHORIZATION PROCESS

Upon request by the Participating Agency, Contractor shall provide a written estimate of job costs including separate line items for labor, materials, tasks, permit(s) if applicable, and sales tax. Estimates shall be provided on a Time and Material, Fixed Price Lump Sum, or Reimbursable Not to Exceed basis, as requested by Court's Project Manager, or designee.

1. The Participating Agency will authorize the performance of Work and spending of funds under this Agreement via written Work Order(s) which shall be substantially in the format provided in Exhibit D-2, Services Request Form and authorized as specified in this Work Order process.
2. The Court's Project Manager, or designee, will provide Contractor with an unsigned Services Request Form, describing the Project, along with any Project specific specifications and permitting information. The Participating Agency will complete the parts of the form designated as “Participating Agency to Complete”. The Participating Agency shall describe in full the Services requested, including the location(s) at which they will be performed, as well as the tentative beginning and end dates for the Work. When complete, the Court's Project Manager, or designee, will submit the unsigned Services Request Form and any other Project specific documents to Contractor’s Project Manager.
3. Upon receipt, Contractor will, based upon the Services requested by the Participating Agency modify the Services Request Form, changing its title to “Proposal” and shall, in coordination with and with the agreement of the Court’s designated Project Manager:
   1. Assign and Provide Name and Contact information of the Contractor’s Project Manager who will be assigned to this Work Order.
   2. Provide a Statement of Work. Provide a narrative work plan specifying the responsibilities of the parties and the Key Personnel with regard to performance of the Work, including any assumptions and/or conditions applicable to performance of the Work
   3. If agreed to, provide revised start and completion dates for the Work, or provide a detailed Project Schedule detailing the critical path responsibilities for the Project.
   4. Provide a list of Key Personnel who will be assigned to perform the Work. Identify any Subcontractor personnel as such.
   5. In the Price area of the form:
      1. If the Services have been requested on a **Deliverables Basis and a Fixed Price Basis**, provide a description of the Services pertaining to each individual Deliverable along with the name of the Deliverable and a Firm Fixed Price for that Deliverable. If more than one Deliverable is requested, provide a grand total (“Grand Total”) of all Deliverables for the Work Order. Provide a schedule naming the Deliverables and identifying the Fixed Price to be paid for each Deliverable.
      2. If the Services have been requested on a **Deliverables Basis and a Time and Materials** Not to Exceed Basis, provide a description of the Services pertaining to each individual Deliverable along with the name of the Deliverable and the name(s) and title(s) of Key Personnel that will perform the Services, their expected hours of Work, their applicable Hourly Rates, and total expected amount to be paid for each employee. Describe any expected Travel and Living Expenses that are expected to be incurred in pursuit of providing the Deliverable. Describe any Reimbursable Expenses that are expected to be incurred in pursuit of providing the Deliverable. Provide a total, for each Deliverable, including the cost of all Work to be performed on an Hourly Basis, all expected Travel and Living Expense, and all expected Reimbursable Expenses. Provide a Grand Total of all Deliverables for the Work Order.
      3. If the Services have been requested on a **Time and Materials Not to Exceed Basis** but not on a on a Deliverables Basis, provide a description of the Services and the name(s) and title(s) of Key Personnel that will perform the Services, their expected hours of Work, their applicable Hourly Rates, and total expected amount to be paid for each employee. Describe any expected Travel and Living Expenses that are expected to be incurred in pursuit of providing the Services. Describe any Reimbursable Expenses that are expected to be incurred in pursuit of providing the Work. Provide a Grand Total of the Hourly Work, Travel and Living Expenses, and Reimbursable Expense(s) applicable to the Work Order.
   6. Upon completion of the above, Contractor shall submit the unsigned Proposal to the Court's Project Manager, or designee, via e-mail.
   7. Contractor Proposals so submitted are irrevocable for twenty (20) Business Days following the day received by the Participating Agency, or until the date scheduled for the start of the Work in the applicable Work Order, whichever event occurs sooner.
4. If the Participating Agency wishes to accept the Proposal and proceed with the Work, the Participating Agency will notify the Contractor and shall provide via e-mail a Work Order consisting of the then current format of Exhibit D-3, Work Order Form, authorizing the Proposal in the full amount specified in the Proposal and referencing the Proposal.
5. Contractor shall sign two (2) originals of the Work Order, which shall be sent to the Participating Agency at the following address:

Buyer Name

Buyer Title

Participating Agency

Participating Agency’s Address

1. Upon receipt, the Participating Agency shall, if it chooses to proceed with authorization of the Work Order, countersign both originals and return one (1) original to the Contractor.
2. Upon countersignature by the Participating Agency, the Work Order shall, for the purposes of this Agreement, be considered authorized, and shall be binding upon the parties.
3. Upon receipt of a signed Work Order, Contractor is authorized to begin the Work when and as specified in said Work Order.
4. If the parties agree to revise an existing Work Order, the parties agree that such revisions are subject to the authorization of a revision to be performed in the same manner as authorization of the Work Order itself. Upon authorization, the revised Work Order shall supersede and override the existing Work Order.
5. The Participating Agency reserves the right to modify the forms provided in Exhibit D-3, Work Order Form, as it deems necessary or appropriate, in its sole discretion, and will notify Contractor of any modification to said form prior to implementing the modified form(s). Any such modification(s) will be incorporated into this Agreement by an Amendment.
6. Any commencement of Work and any expenditure made prior to Contractor’s receipt of a signed Work Order shall be made at Contractor’s sole risk.
7. The Court's Project Manager, or designee, named on the individual Work Order(s) shall monitor and evaluate Contractor's performance. All requests and communications between the Participating Agency and the Contractor regarding the Work must be made through the Court’s designated Project Manager(s).
8. There is no limit on the number of Work Orders the Participating Agency may issue under this Agreement.
9. There will be no specific limitation on the minimum and/or maximum amount authorized under individual Work Order(s).
10. The Participating Agency does not guarantee that Contractor will receive any Work Order(s) under this Agreement.

***END OF EXHIBIT D-1***

# EXHIBIT D-2: SERVICES REQUEST FORM

This Services Request is made by the Participating Agency under Agreement No xxxxx with Contractor.

***Participating Agency to Complete:***

The Court’s Project Manager for this Services Request is:

|  |  |
| --- | --- |
| Name: |  |
| Address: |  |
| Phone: |  |
| Fax: |  |

Participating Agency Request No. xxxxx-\_\_\_\_\_\_\_\_\_\_

Date of Submission of Participating Agency Request: \_\_\_\_/\_\_\_\_/\_\_\_\_\_\_\_\_\_\_

Contractor Required Proposal Date (Five (5) Business Days following date of receipt): \_\_\_\_/\_\_\_\_/\_\_\_\_\_\_\_\_\_\_

Description of Work Requested:

Contractor shall deliver a total and complete project as requested for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Project.

**Task Required.** Contactor shall perform the following general and specialized tasks:

**TECHNICAL CLARIFICATIONS:**

|  |
| --- |
|  |
|  |
|  |
|  |

***Contractor to Complete:***

The Contractor’s Project Manager for this Work Order shall be:

|  |  |
| --- | --- |
| Name: |  |
| Address: |  |
| Phone: |  |
| Fax: |  |

Agreed to Description of the Work (Statement of Work):

|  |
| --- |
|  |

Agreed to Modified Dates of Performance:

Start of the Work: \_\_\_\_/\_\_\_\_/\_\_\_\_\_\_\_\_\_\_

Completion of the Work: \_\_\_\_/\_\_\_\_/\_\_\_\_\_\_\_\_\_\_

Detailed Project Schedule Attached

|  |  |  |
| --- | --- | --- |
| Date Scheduled | Responsible Party | Activity |
|  |  |  |
|  |  |  |
|  |  |  |

Key Personnel to be Assigned to the Work: (Also identify if Subcontractor personnel)

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Name | Title | Subcontractor Company Name | Trade | Contact Number | Email Address |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

Price: (Contractor to indicate pricing type. Court’s Project Manager may request pricing type to be used.)

Time & Materials /  Fixed Price Lump Sum /  Reimbursable Not to Exceed

|  |  |  |
| --- | --- | --- |
| Item | **Description** | **Amount** |
|  |  | $ |
|  |  | $ |
|  |  | $ |
| General Conditions |  | $ |
| Fees |  | $ |
| Tax |  | $ |
| **Grand Total** | | **$** |

Designated Subcontractor(s): (Include Company Name, Address, Contact and Services/Equipment provided.)

|  |
| --- |
|  |
|  |

Date of Contractor’s Proposal: \_\_\_\_/\_\_\_\_/\_\_\_\_\_\_\_\_\_\_

***END OF EXHIBIT D-2***

# EXHIBIT D-3: WORK ORDER FORM

|  |  |
| --- | --- |
| Work Order Number  TBD | Amendment Number |
| TAXPAYER’S FEDERAL EMPLOYER IDENTIFICATION NUMBER  xxxxxxxxx | |

State of California

**WORK ORDER**

THIS WORK ORDER is made and entered into, in the State of California, by and between the Participating Agency and Contractor Name.

|  |  |  |  |
| --- | --- | --- | --- |
| COURT PROJECT MANAGER | ENTITY  **Participating Agency** | | , hereafter called the ”PA”, and |
| CONTRACTOR'S NAME |  | | , hereafter called the Contractor. |
| WITNESSETH: That the Contractor for and in consideration of the covenants, conditions, agreements, and stipulations of the Participating Agency hereinafter expressed, does agree to furnish to the Participating Agency services and materials as follows: | | | |
| **THIS WORK ORDER** is issued pursuant to the terms of Agreement No. XXXXX, by and between the Participating Agency and Contractor. By its execution hereof, Contractor agrees to perform for Participating Agency, pursuant to the terms, conditions, and provisions of the Agreement, the following described Work, and shall furnish all supervision, labor, materials, equipment, tools, transportation, methods of communication, miscellaneous services, and other facilities and items necessary or convenient to complete the following Work as further described and specified in Contractor’s Proposal attached hereto and by this reference made a part of this Work Order (“the Work”). Contractor’s additional or different terms and conditions are expressly excluded from this Agreement and the Participating Agency does not agree to such terms or conditions. The undersigned shall be solely responsible for the liabilities and obligations set forth in the Agreement under which this Work Order is being issued, as the same apply to the Work to be performed pursuant hereto.  The Work Order includes the following:  (1) Attachment A, Services Request Form;  (2) Attachment B, Contractor Proposal  The Contractor shall provide specified services for Project, as further specified in the Contract Documents.  Contractor shall commence the Work by \_\_\_\_/\_\_\_\_/\_\_\_\_\_\_\_\_, and shall complete the Work on or before \_\_\_\_/\_\_\_\_/\_\_\_\_\_\_\_\_.  Contractor shall furnish the Work to the Participating Agency for a total Work Order amount of $\_\_\_\_\_\_\_\_\_\_\_\_.\_\_\_\_\_\_. Payment shall be made in accordance with Exhibit B Payment Provisions and Exhibit D-1 Work Order Authorization Process of Agreement No. xxxxxx on a  **Time & Materials Not To Exceed** /  **Fixed Price Lump Sum**  The term of this Agreement begins on the date executed by the Participating Agency and is complete upon written final acceptance by the Court’s Project Manager via Exhibit E, Acceptance and Sign-Off Form. | | | |
| IN WITNESS WHEREOF, this Work Order is hereby agreed to and notice to proceed is given. | | | |
| **COURT** | | **CONTRACTOR** | |
| ENTITY  Participating Agency | | CONTRACTOR (if other than an individual, state whether a corporation, partnership, etc.) | |
| BY (AUTHORIZED SIGNATURE) / DATE | | BY (AUTHORIZED SIGNATURE) / DATE | |
| PRINTED NAME | | PRINTED NAME | |
| Project Manager | | TITLE | |

***END OF EXHIBIT D-3***

# EXHIBIT E: ACCEPTANCE AND SIGN-OFF FORM

|  |  |  |
| --- | --- | --- |
| **For Work Order No.** | **xxx -** |  |

Description of Work provided by Contractor:

Date submitted:

*To be completed by the Participating Agency*

Work is:

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

2) Complete:  yes  no. If no, please identify incomplete aspects of the Work.

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

Please note level of satisfaction:

Poor  Fair  Good  Very Good  Excellent

Comments, if any:

Work is accepted.

Work is unacceptable as noted above.

Name:

Title:

Date:

Signature:

***END OF EXHIBIT E***

# EXHIBIT F: TRAVEL GUIDELINES FOR JBE

The Court’s policy and limits on reimbursable travel-related expenses are listed below. To be eligible for lodging and/or meal reimbursement, expenses must be incurred in excess of 25 miles from headquarters; must be pre-approved in advance by Court designated project manager and is provided herein for Work performed on a time and material or reimbursable not-to-exceed basis. Lodging, incidentals, and travel meal costs reimbursed within 50 miles from headquarters are taxable and reportable income. All Work performed on a fixed price lump-sum basis is inclusive of travel expenses.

## Lodging.

Receipts are required and each day of lodging claimed must be listed separately on the reimbursement claim form. Maximum rates are listed below. Exceptions may be considered on a case-by-case basis, and for centrally booked conferences or meetings. Receipts for hotel lodging charges must be on a pre-printed bill head with a zero balance shown. The hotel express check-out or receipts from a third-party provider for lodging booked via the internet are not valid receipts. In some instances, a hotel may decline to issue a receipt on their pre-printed billing head for lodging booked via the internet.

### **In-state.**

Actual costs are reimbursable up to the maximum amount indicated below, plus any applicable taxes and surcharges or fees:

* Los Angeles, Orange and Ventura Counties - $120 per day
* San Francisco County - $150 per day
* Monterey and San Diego Counties - $125
* Alameda, San Mateo and Santa Clara Counties - $140 per day
* All other counties - $110 per day

### **Out-of-state.**

Actual costs are reimbursable with appropriate prior approval.

## Meals.

### Actual costs are reimbursable up to the limits stated below for continuous travel of more than 24 hours.

* Breakfast. - Up to eight dollars ($8.00).
* Lunch. - Up to twelve dollars ($12.00).
* Dinner. - Up to twenty dollars ($20.00).

### Meal reimbursement for one-day trips is taxable and reportable income unless travel included an overnight stay. For continuous travel of less than 24 hours, actual expenses up to the above limits may be reimbursable if:

#### Travel begins one (1) hour before normal work hours, breakfast may be claimed.

#### Travel ends one (1) hour after normal work hours, dinner may be claimed.

#### Lunch may not be claimed on trips of less than 24 hours.

### In accordance with agency policy, judges, commissioners, and those non-represented personnel who earn more than $100,000 per year are not reimbursed for travel-related lunch meal expenses, effective October 1, 2003.

## Incidental Expenses.

Up to six dollars **($6.00)** per day. Incidentals are not reimbursable for travel less than 24 hours.

## Transportation.

The actual cost of tickets for air, rail, bus, rental car, or other forms of public transportation is reimbursable. The lowest cost ticket available must be purchased. Receipts are required for rental cars and air travel. For ticketless travel, the traveler’s itinerary may be submitted in lieu of a receipt.

### The actual costs of cab fare, public parking, and tolls are reimbursable. Receipts are required for all expenses of three dollars and fifty cents ($3.50) or more.

### Personal vehicle mileage is reimbursable at the current federal mileage reimbursement rate that corresponds to the date/s of travel.

### Privately owned aircraft is reimbursable at the rate of fifty cents ($.50) per statute mile. This reimbursement is taxable and reportable income.

## Other Business Expenses.

Actual cost is reimbursable. Receipts are required for all other business expenses, regardless of the amount claimed.

In the event receipts cannot be obtained or have been lost, a statement to that effect and the reason provided shall be noted in the expense account. In the absence of a satisfactory explanation, the amount involved shall not be allowed. Further, a statement explaining that a receipt has been lost shall not be accepted for lodging, airfare, rental car, or business expenses.

Receipts for telephone or telegraph charges related to court business of two dollars and fifty cents **($2.50)** or less are not required. However, claims for phone calls must include the place and party called.

***END OF EXHIBIT F***

# EXHIBIT G: APPLICATION AND CONSENT TO PERFORM BACKGROUND CHECK

Application must be completed, signed and returned to the Participating Agency within 48 hours of receipt.

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, do hereby authorize the Participating Agency to perform a background check prior to the commencement of my services.

I understand that this background check may include fingerprinting, a review of DMV records, records, Sheriff records, other law enforcement records, and Department of Justice records.

I hereby provide the following information and attest to its accuracy. I will immediately notify the Court of any arrests or citations subsequent to this application until the work has been completed and accepted by the Participating Agency.

|  |  |  |  |
| --- | --- | --- | --- |
| CA Driver’s License or ID No.: |  | Expiration Date: |  |

A photocopy of a current Driver’s License or California Identification Card MUST BE attached.

|  |  |  |  |
| --- | --- | --- | --- |
| Date of Birth: |  | Home Phone Number: |  |
|  | | | |
| Home Address: |  | | |
|  | | | |
| Employer/Business Name: |  | | |
|  | | | |
| Employer Phone Number: |  | Fax Number: |  |

As an adult, have you ever been convicted of a crime by any court? (Omit minor traffic violations).

|  |  |  |  |
| --- | --- | --- | --- |
| Yes: |  | No: |  |

If “yes”, provide details below. If more space is needed, please attach a second sheet.

|  |  |  |  |
| --- | --- | --- | --- |
| Offense | Court / Jurisdiction | Date of Conviction | Penalties |
|  |  |  |  |
|  |  |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
| Signed: |  | Date: |  |

|  |  |  |  |
| --- | --- | --- | --- |
| Approved: |  | Denied: |  |

|  |  |  |  |
| --- | --- | --- | --- |
| Authorized Signer’s Signature: |  | Date: |  |

|  |  |
| --- | --- |
| Notification Sent: |  |

***END OF EXHIBIT G***

# EXHIBIT H: MASTER SERVICES AGREEMENT

The Master Services Agreement will be inserted upon execution.

For the purposes of RFP 1310-002, the Master Services Agreement is attached as Attachment G.

***END OF EXHIBIT H***

***END OF AGREEMENT***