

Contract number: [blank]

ATTACHMENT E
MARYLAND ADMINISTRATIVE OFFICE OF THE COURTS
MARYLAND ELECTRONIC COURT PROCUREMENT

STANDARD TERMS AND CONDITIONS

This Contract is made this ____ day of _____ 201____, by and between the Administrative Office of the Courts (the “AOC”) in the State of Maryland and [blank] (the “Contractor”).

In consideration of the mutual covenants and promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the AOC and the Contractor agree as follows:

1. Scope of Contract

- 1.1 The Contractor shall provide services, computer software, and other deliverables in accordance with the terms and conditions of this Contract and the following Exhibits, which are attached to this Contract and incorporated as part of this Contract:
 - Exhibit A: Request for Proposal dated September 1, 2010 and all amendments and exhibits thereto (collectively referred to as the “RFP”)
 - Exhibit B Contractor’s Proposal dated ##### and [**subsequent documents with dates, if accepted**] (collectively referred to as “the Proposal”)
 - Exhibit C: Executed and completed Non-Disclosure Agreement
- 1.2 If there are any inconsistencies between the contract and any of the Exhibits, the terms of this Contract shall prevail. If there are any inconsistencies between Exhibits A and B, Exhibit A shall prevail.
- 1.3 The Procurement Officer may, at any time, by written order make changes in the work within the general scope of the Contract. No other order, statement, or conduct of the Procurement Officer or of any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section.
- 1.4 Except as otherwise provided in this Contract, if any order causes an increase or decrease in the Contractor’s cost of, or the time required for, the performance of any part of the work, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty days (30) of receipt of a written change order and include a written statement setting forth the

nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract.

- 1.5 Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

2. Term of the Contract

Unless the Contract is terminated earlier as provided herein, the term of the Contract is the period beginning on [_____, 20__] and ending on [_____, 20__]. The AOC, at its sole option, shall have the unilateral right to extend the contract for as many as five additional successive one-year terms.

3. Consideration and Payment

- 3.1 In consideration of the satisfactory performance of the Services, the AOC shall pay the Contractor in accordance with the terms of this Contract and at the rate specified in the Proposal. Except with the express written consent of the Procurement Officer, total payments to the Contractor pursuant to this Contract may not exceed [\$____.____] (the "NTE Amount").
- 3.2 All invoices shall be submitted within 30 calendar days after the completion and acceptance by the AOC for each deliverable and include the following information: name and address of the AOC; vendor name; remittance address; federal taxpayer identification or (if owned by an individual) his/her social security number; invoice period; invoice date; invoice number; amount due; retainage (if applicable), and the deliverable ID number for the deliverable being invoiced. All hardware manufacturer serial, make, and model numbers should be included on invoices including those goods. Additional information may be required in the future. Invoices submitted without the required information will not be processed for payment until the Contractor provides the requested information.
- 3.3 The Contractor shall submit an invoice for each completed deliverable accepted by the AOC.
- 3.4 Ten percent (10%) of each applicable invoice shall be withheld by the AOC as retainage. Disbursement of each retainage will occur after the Contractor invoices the retainage and the Contract Manager approves payment of that retainage.
- 3.5 Payments to the Contractor for each deliverable shall be made no later than thirty days after the acceptance of the deliverable and receipt of a proper invoice from the Contractor. Charges for late payment of invoices are prohibited.
- 3.6 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the

Procurement Officer may refuse or limit approval of any invoice for payment and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer in accordance with this Contract. The final Contract payment will not be made until after certification is received from the Comptroller of the State that all taxes have been paid. Final payment shall not be construed as a waiver or termination of any rights and remedies available to AOC for any failure of Contractor to perform the Contract in a satisfactory and timely manner.

4. Warranties

The Contractor hereby represents and warrants that:

- 4.1 It is qualified to do business in the State of Maryland and that it will take such action as, from time to time, may be necessary to remain so qualified;
- 4.2 It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- 4.3 It shall comply with all federal, State and local laws applicable to its activities and obligations under this Contract;
- 4.4 It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

5. Patents and Copyrights

- 5.1 If the Contractor furnishes any design, device, material, process, code, or other item that is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license for AOC's use of such item or items.
- 5.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State, AOC, or their employees acting within the scope of employment, alleging that any such item furnished by the Contractor infringes any patent, trademark, copyright, or trade secret. The Contractor also will pay all damages and costs that by final judgment might be assessed against the State, AOC, or their employees acting within the scope of employment, due to such infringement and all attorney fees and litigation expenses reasonably incurred by the State to defend against such a claim or suit.
- 5.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at

its option and expense: a) procure for the AOC the right to continue using the applicable item, b) replace the product with a non-infringing product substantially complying with the item's specifications, or c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

- 5.4 If the Contractor obtains or uses for purposes of this Contract any design, device, material, process, code, supplies, equipment, text, instructional material, services or other work, the Contractor shall indemnify the AOC, its Officers, agents, and employees with respect to any claim, action, cost, or judgment for patent, trademark, or copyright infringement, arising out of the possession or use of any design, device, material, process, supplies, equipment, text, instructional material, services or other work covered by any Contract awarded.

6. Non-hiring of Employees

No employee of the State of Maryland or any unit hereof whose duties as such employee include matters relating to or affecting the subject matter of this Contract shall, while so employed, become or be an employee of the Contractor.

7. Non-employment of Contractor's employees

Nothing in this contract shall be construed to create an employment relationship between AOC and any employee of either the Contractor or Contractor's subcontractors. Contractor is responsible for the acts and omissions of its agents, employees, and subcontractors.

8. Disputes

Any claim regarding the proper interpretation of this Contract shall be submitted, in writing, to the Procurement Officer, together with a statement of grounds supporting the Contractor's interpretation. Pending resolution of a claim by the Procurement Officer, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. An adverse decision to the Contractor may be appealed by the Contractor to the Appeals Board within 15 days of the Procurement Officer's decision.

9. Maryland Law

The place of performance of this Contract shall be the State of Maryland. This Contract shall be performed, construed, interpreted, and enforced according to the laws of the State of Maryland, including State Government Article § 12-204. No action relating to this contract shall be brought in any forum other than Maryland, whether or not the AOC and State are parties to such an action.

10. Amendments

Except as provided in section 2, any amendment to this Contract must first be approved in writing by the Procurement Officer, subject to any additional approvals required by State law and the Judiciary's Procurement Policy.

11. Non-discrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against any person because of race, color, religion, age, sex, marital status, national origin, disability, familial status, genetic information, and sexual orientation; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

12. Contingent Fee Prohibition

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the Contractor to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide salesperson, or commercial selling agency, any fee or other consideration contingent on the making of this Contract.

13. Non-availability of Funding

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal year of this Contract succeeding the first fiscal year, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the AOC's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the AOC from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The AOC shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

14. Termination for Cause

If Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the AOC may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the AOC's option, become the AOC's property. The AOC shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination, and the AOC can affirmatively collect damages.

15. Termination for Convenience

The performance of work under this Contract may be terminated by the AOC in accordance with this clause in whole or, from time to time, in part whenever the AOC shall determine that such termination is in the AOC's best interest. The AOC will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination.

16. Delays and Extensions of Time

The Contractor agrees to perform this Contract continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances, regardless of cause, in the performance of services under this Contract. Time extensions may be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of an AOC contract, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or the delay of a subcontractor or supplier arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractor or supplier.

17. Suspension of Work

The AOC unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the AOC's convenience.

18. Pre-existing Regulations

The applicable statutes and regulations of the State of Maryland, including those of the Judiciary, are incorporated in this Contract.

19. Financial Disclosure

The Contractor shall comply with the provisions of § 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland.

20. Political Contribution Disclosure.

The Contractor shall comply with Title 14 of the Election Law of Maryland.

21. Right to Audit

The Contractor shall cooperate fully with any audit conducted by the State. The Contractor shall retain and maintain all records and documents relating to this Contract for five (5) years after final payment by the AOC hereunder and shall make them available for inspection and audit by authorized representatives of the State and AOC, including the Procurement Officer or the Procurement Officer's designee, at all reasonable times.

22. Liability for Loss of Data

In the event of loss of any data or records necessary for the performance of this Contract, which such loss is due to the error or negligence of the Contractor, the Contractor shall be responsible, irrespective of cost to the Contractor, for recreating all such lost data or records in a manner, format, and time-frame acceptable to the AOC.

23. Cost and Price Certification

By submitting cost or price information, the Contractor certified to the best of its knowledge that the information submitted was accurate, complete, and current as of **[blank*]**. The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of **[blank*]** was inaccurate, incomplete, or not current.

24. Subcontracting and Assignment

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the Procurement Officer's prior written approval, nor may the Contractor assign this Contract, or any of its rights or obligations hereunder,

without the Procurement Officer's prior written approval. Any such subcontract or assignment shall be subject to any terms and conditions that the Procurement Officer deems necessary to protect the interest of the State. The AOC shall not be responsible for the fulfillment of the Contractor's obligations to subcontractors.

25. Indemnification

- 25.1 The Contractor shall indemnify the AOC against liability for any suits, actions, or claims of any character arising from or relating to the performance of the Contractor or its subcontractors under this Contract.
- 25.2 The AOC has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.
- 25.3 The AOC has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.
- 25.4 The Contractor shall immediately notify the Procurement Officer of any claim, suit or action made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's obligations under the Contract, and shall cooperate, assist and consult with the AOC in the defense or investigation of any such claim, suit, or action.

26. Limitation of Liability

Without prejudice to AOC's right to pursue non-monetary remedies, Contractor shall be liable as follows:

- 26.1 For infringement of patents, trademarks, trade secrets, and copyrights, as provided in § 5 of this Contract;
- 2.6.2 For damages arising out of death or bodily injury or property damage, no limitation;
- 2.6.3 For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract, regardless of the form of such actions, Contractor's liability shall not exceed five (5) times the NTE amount. Notwithstanding the foregoing, Contractor's liability for third-party claims shall be unlimited.

27. Public Information Act Notice

The AOC provides public access to records in accordance with § 10-617(d) of the State Government Article, Annotated Code of Maryland, and other laws relating to access to public records, including Maryland Rules of Procedure, Rules 16-1001 through 16-1011. If a request is made to review any records pertaining to this contract, the Contractor may be contacted, as circumstances allow, to express its views on the availability of requested information. The final decision on release of any information rests with the AOC.

28. Conflict of Interest

28.1 "Conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State or the AOC, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage. "Conflict of interest" includes pending litigation in the Maryland courts.

28.2 "Person" includes a contractor, consultant, or subcontractor or subconsultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a bid or offer is made.

28.3 The Contractor warrants that, except as disclosed in § D, below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.

28.4 The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain details-attach additional sheets if necessary):

28.5 The Contractor agrees that if an actual or potential **conflict of interest** arises after the contract commences, the Contractor shall immediately make a full disclosure in writing to the Procurement Officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the Contractor has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contract has been awarded and performance of the contract has begun, the contractor shall continue performance until notified by the Procurement Officer of any contrary action to be taken. The existence of a conflict of interest is cause for termination of the Contract as well as disciplinary action against an employee for whom a conflict exists.

29. Ownership and Rights in Data

- 29.1 In addition to the requirements stated in the RFP, the Contractor agrees to furnish the AOC with copies of the following: computations, computer files, data, model(s), transmittal letters, response letters, training materials, and all other documents or correspondence pertinent to the operation of the System, including for instance, the components and subcomponents of the MDEC Core System, produced or received as part of this Contract and any amendments thereto. In addition, all hardware and software developed, created, modified, or configured (“Developed Materials”) in accordance with the terms of this Contract are, and shall remain, the exclusive property of the AOC. Licenses for all “commercial off the shelf” software (“COTS software”) shall be provided to the AOC with all rights to use those materials. For all COTS materials delivered to AOC under this Contract, the Contractor shall provide the AOC, at no additional cost, with copies of all end user software licensing agreements in accordance with the OEM’s standard software license and paid-up licenses through the maintenance period.
- 29.2 The AOC shall be the owner of all Developed Materials and shall be entitled to use, transfer, disclose, and copy them in any manner, without restriction and without compensation to the Contractor. Without AOC’s prior written consent, the Contractor may neither use, execute, reproduce, display, perform, distribute (internally or externally), retain copies of, or prepare derivative works based on, these Materials nor authorize others to perform those acts.
- 29.3 The Contractor agrees that, at all times during the terms of this Contract and thereafter, all Developed Materials created pursuant to this Contract, including, for instance, materials related to the development, implementation, and operation of the MDEC, shall be “works for hire” as that term is interpreted under U.S. copyright law. To the extent that any of these materials are not works for hire for the AOC, the Contractor hereby relinquishes, transfers, and assigns to the AOC all of its rights, title, and interest (including all intellectual property rights) in such materials, and shall cooperate with the AOC in effectuating and registering any necessary assignments.
- 29.4 The Judiciary shall retain full ownership over any materials that the Judiciary provides to the Contractor under this Contract.

30. Post Implementation Warranties

- 30.1 The Contractor shall provide a three year manufacturer’s extended warranty on all hardware and operating software, at the level which is typically referred to in the hardware/software manufacturing industry as a “Gold” level warranty. The selection and purchase of these warranties must have prior written approval of the AOC CM.

30.2 The Contractor must provide a minimum of a one-year warranty on all application software provided by Contractor, with the exception of operating system software. The warranty period shall begin after final implementation of Release 1.0 and Release 2.0.

30.3 Contractor acknowledges that the AOC will rely on Contractor's expertise, skill, and judgment with respect to the goods and services Contractor provides. Contractor further warrants that the goods it furnishes shall be merchantable and fit for the particular purposes for which they were provided. Nothing shall be construed in either this Contract or the course of the parties' conduct to exclude, waive, or modify any warranties, whether express or implied, available by law to the AOC.

31. Notices

All notices required to be given by one party to the other hereunder shall be in writing and shall be addressed as follows:

State: Susan S. Howells, Executive Director
Procurement and Contract Administration
Maryland Judicial Center
580 Taylor Ave.
Annapolis, Maryland 21401
410-260-1410

Contractor: [blank]

SIGNATURES:

In Witness Whereof, the parties have signed this Contract this _____ day of _____, 201__.

Approved for form and legal sufficiency this ____ day of _____, 201__

David R. Durfee Jr.
Director of Legal Affairs

Contractor: [name]

_____(SEAL)

Signature
Authorized Representative

Date: _____

Reviewed:

Frank Broccolina
State Court Administrator

Date: _____

Administrative Office of the Courts:

_____(SEAL)

Robert M. Bell, Chief Judge
Court of Appeals of Maryland
Date: _____