

MUTUAL NONDISCLOSURE AND CONFIDENTIALITY AGREEMENT

State Court Administrative Office
Hall of Justice
925 W. Ottawa Street
Lansing, MI 48915

Bidder

1. DEFINITIONS GOVERNING MUTUAL NONDISCLOSURE AND CONFIDENTIALITY AGREEMENT

1.01 The term “Agreement” means the entire content of this Mutual Nondisclosure and Confidentiality Agreement document and the Proposal document(s) together with any other supplements or amendments mentioned below, together with any exhibits, schedules or attachments hereto.

1.02 The term “Confidential and Proprietary Information” means confidential and/or proprietary information belonging to the State Court Administrative Office (the “SCAO”) which is disclosed to the Receiving Party or which the Receiving Party otherwise learns of during the course of or as the direct or indirect result of evaluating its business opportunities with the SCAO.

Confidential and Proprietary Information is information not generally known to third parties or to others who could obtain economic value from their disclosure or use of the information. This includes all proprietary technical, financial, or other information owned by SCAO or any of its vendors, including by way of illustration, but not limitation, computerized data, codes, programs and software, written material, inventions, whether or not patented or patentable, designs, works of authorship, works subject to or under copyright protection, trade secrets or trade mark – protected material, performance standards concepts, formulae, charts, statistics, financial records and reports of the SCAO or any entity otherwise affiliated with the SCAO. Confidential and Proprietary Information also includes all confidential and proprietary material that the Receiving Party may design, author, create, distribute or produce during the term of this Agreement when rendering Services thereunder. All information gained during the course of Receiving Party’s retention should be presumed confidential unless the information is clearly identified otherwise or the circumstances of disclosure demonstrate it not to be confidential.

1.03 The term “Disclosing Party” is the party providing Confidential and Proprietary Information to the other party.

1.04 The term “BIDDER” means the party with which the State Court Administrative Office is contracting and includes BIDDER’S employees, subcontractors and affiliates under this Agreement.

1.05 The term “Effective Date” means the date upon which the Agreement becomes effective, which is the date the Agreement is signed by both parties. If the Parties do not sign the Agreement on the same date, the latest specified date will become the Agreement’s effective date.

1.06 The term “Employee Benefits” means any and all employee benefits the State Court Administrative Office provides to its employees, including, but not limited to, workers’ compensation benefits, retirement benefits, pension benefits, insurance benefits, fringe benefits, educational and/or training benefits, holiday pay, sick pay, vacation pay, or such other benefits.

1.07 The term “Parties” refers to all parties to the Agreement, including the State Court Administrative Office and BIDDER.

1.08 The term “Receiving Party” is the party receiving Confidential and Proprietary Information to the other party.

1.09 The terms “SCAO” and “the SCAO” means the State Court Administrative Office located at the Hall of Justice, 925 W. Ottawa Street, Lansing, MI 48915.

1.10 The term “Taxes” refers to any and all federal, state, and local taxes, including, but not limited to, income taxes, social security taxes, unemployment insurance taxes, and any other taxes or fees for which BIDDER is responsible.

2. GENERAL PROVISIONS OF AGREEMENT

2.01 This Agreement is made between the SCAO and BIDDER to enter into discussions regarding various aspects of the businesses of SCAO and of BIDDER, including exploring the potential opportunities of transacting business together.

2.02 SCAO and BIDDER, in order to evaluate their potential business opportunities and during the course of contemplated discussions between them, will be furnishing to one another Confidential and Proprietary Information, and the Parties acknowledge and agree that they will each take appropriate and necessary steps to protect such Confidential and Proprietary Information received from the other, and will not use such information to directly interfere with the operations of or to compete with the other as further explained below.

2.03 In consideration of the mutual promises and covenants in this Agreement, and the benefits to be derived from this Agreement, which are acknowledged by both Parties to be sufficient, the Parties agree to the terms set forth herein.

3. TERM OF AGREEMENT

3.01 This Agreement becomes effective on the Effective Date.

3.02 This Agreement terminates upon the complete performance of both Parties.

3.03 In the event that an extension of this Agreement is desired, the Parties must agree to the extension in writing.

4. RELATIONSHIP

4.01 BIDDER is an independent contractor, not an employee of the SCAO. Further, no employee or subcontractor of BIDDER is an employee of the SCAO. No employer/employee relationship exists between the Parties.

4.02 SCAO is not obligated either under this Agreement or by implication to provide and is not liable to BIDDER for failure to provide BIDDER with Employee Benefits. BIDDER is not eligible for and will not receive any Employee Benefits from the SCAO.

4.03 BIDDER is responsible for payment of any and all Taxes arising out of activities undertaken by it in furtherance of this Agreement.

5. CONFIDENTIALITY OF INFORMATION

5.01 Limited Use of Confidential and Proprietary Information. In order that BIDDER may fully explore the activities of the SCAO under this Agreement, the SCAO may disclose Confidential and Proprietary information pertaining to the SCAO's past, present, and future activities to the Provider. BIDDER may also disclose Confidential and Proprietary Information to the SCAO. The SCAO and BIDDER each agree to use diligent efforts to protect the other's Confidential and Proprietary Information and such information shall only be disclosed to employees, agents, or subcontractors of a party who have a need to know or to use such Confidential and Proprietary Information in connection with this Agreement. Each such employee, agent and subcontractor is bound by this Agreement. Confidential and Proprietary information will only be shared with others subject to the conditions listed below.

5.02 Presumption of Confidentiality. All information gained by the Parties during the course of this Agreement should be presumed confidential unless the information is clearly identified otherwise or the circumstances of disclosure demonstrate it not to be confidential. SCAO and BIDDER do not need to identify all Confidential and Proprietary Information they wish to protect under the terms of this Agreement by marking the same as "confidential" prior to disseminating or distributing the same to the other, unless the Parties agree to this course of action.

Additionally, the Parties agree that they will not modify reverse engineer, de-compile, create other work forms, or disassemble any software programs containing the Confidential and Proprietary Information of the other party unless otherwise agreed to in writing by the Disclosing Party.

5.03 Advising employees, agents and subcontractors. The Parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential and Proprietary Information confidential before disclosing this Confidential and Proprietary Information. Disclosure to a subcontractor is only permissible where: (a) use of a subcontractor is authorized under this Agreement; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) the party using the

subcontractor (SCAO or BIDDER) obligates the subcontractor in a written contract to keep the Disclosing Party's information confidential. Further, immediately upon the Disclosing Party's request, any employee of SCAO or BIDDER or any of their subcontractors may be required to execute a separate agreement to be bound by the provisions of this Section.

5.04 Pre-Approval from the SCAO. BIDDER shall not disclose or disseminate any of the SCAO's Confidential and Proprietary Information obtained during any term of the Agreement directly or indirectly to any third party, including but not limited to by issuing press releases, articles, social media posts, making public statements about or sharing any of the terms of this Agreement with any third party without doing all of the following: 1) Disclosing to the SCAO the complete content of the intended communication; 2) obtaining the SCAO's consent; and 3) obligating the third party to abide by the terms of the Confidentiality provisions in this Agreement, including obtaining a written agreement if requested by the SCAO.

5.05 Compelled Production of Confidential and Proprietary Information. If disclosure of Confidential and Proprietary Information is required by law or court order, the party from whom disclosure of the Confidential and Proprietary Information is required must notify the Receiving Party. If the Receiving Party is BIDDER, notification must be made as specified in Section 24 below. The Receiving Party will provide a delivery confirmation email upon receipt of such notice. Notification must be accomplished within five (5) business days before disclosure is required, unless the law or a court order requires disclosure before five-days' notice can be given; in these circumstances, notice must be provided as soon as possible. Each party shall reasonably cooperate with the other party to narrowly tailor disclosure and reasonably cooperate with the party attempting to obtain protective orders or other relief as appropriate.

5.06 Exceptions. The following information is an exception to the terms of Subsections 5.01 – 5.05, and modifies the definition of "Confidential and Proprietary Information" set forth in paragraph 1 of this Agreement. The following is not "Confidential and Proprietary Information":

- Information already known to SCAO or BIDDER prior to the date of execution of this Agreement;
- Information which SCAO or BIDDER develops independently without the use of the other's Confidential and Proprietary Information;
- Information that is or becomes available to the general public, and then only beginning from the time it becomes available to the general public; and
- Information that becomes known independently of any disclosure made by SCAO to BIDDER or by BIDDER to SCAO, and then only beginning from the time it is independently made known.

5.07 Ownership, No License or Warranties, Return of Records. All document and records produced by BIDDER shall remain the property of BIDDER. All documents, records and data produced by SCAO shall remain the property of SCAO. The Parties recognize and agree that nothing contained in this Agreement shall be construed as granting to the other any rights, by license or otherwise, to any of the Disclosing Party's Confidential and Proprietary Information. Nothing in this Agreement shall be construed as a warranty, representation, assurance, guarantee or inducement with respect to the content or accuracy of the Confidential and Proprietary

Information. In no event shall the Disclosing Party be liable for the accuracy or completeness of the Confidential and Proprietary Information provided to Receiving Party.

5.08 Return, Destruction and Deletion of Confidential or Proprietary Information. Within five (5) business days of the termination of this Agreement, the Parties shall return, destroy and delete any and all hard copies, electronic copies and copies in any other form of the Confidential and Proprietary Information provided to them by one another. At the time of the return, destruction and/or deletion, the Parties shall provide written certification thereof to the Disclosing Party directed to the points of contact listed in Section 24 of this Agreement. Should the Parties instead decide to continue their business relationship and enter into further contracts or agreements in furtherance thereof, the Parties may agree to different treatment of the Confidential and Proprietary Information if they mutually agree to such an arrangement.

5.09 Section 5 of this Agreement survives termination or expiration of this Agreement.

6. BREACH OF CONFIDENTIALITY PROVISIONS

6.1 The Parties acknowledges that breach of any of their duties of confidentiality may give rise to irreparable injury to the Disclosing Party and third parties, which damage may be inadequately compensable by monetary damages. As such, should the Receiving Party violate any of the terms of this Agreement by disclosing the Confidential and Proprietary Information, the Disclosing Party may seek and obtain immediate injunctive relief against the breach or threatened breach of the foregoing undertakings, which may be granted without the necessity of posting a bond or other surety with the court. In addition to injunctive relief, the Disclosing Party may seek any and all other legal remedies which may be available to it. These remedies include, but are not limited to, monetary damages. Further, at the sole election of the Disclosing Party, the Disclosing Party may immediately terminate this Agreement, without being liable to the Receiving Party for such termination.

6.2 These Breach of Confidentiality Provisions survive the termination of this Agreement.

7. NO LIABILITY BY SCAO

7.1 Bidders are solely responsible for any costs, expenses and damages they incur in the RFP process and in complying with this NDA.

8. EXPORT LAW

Each party acknowledges that Confidential and Proprietary Information which it receives may include technical data developed in the United States, and therefore, shall not export or re-export any Confidential and Proprietary Information without full compliance with all applicable export laws.

9. COMPLIANCE WITH LAWS. The Parties shall comply with all applicable laws, ordinances, ethics rules, administrative orders and codes of the federal, state, and local governments and the judiciary, and shall save and hold the other harmless with respect to any damages arising from any violation of the same by the other Party.

10. TERMINATION

This Agreement terminates at the end of the bidding process. Each Party has the right to terminate this Agreement before that time without cause. However, the terminating party must provide written notice to the other party of such termination at least five (5) business days before the termination will be effective. Termination notice shall be accomplished in the manner set forth in Section 24 of this Agreement. Further, termination of this Agreement does not alleviate the duties each party owes the other with respect to the guarding from disclosure of the Confidential and Proprietary Information.

11. NONCOMPETITION

SCAO and BIDDER each agree that they will not use the Confidential and Proprietary Information disclosed to directly or indirectly perform services for a customer of the other, regardless of the geographic location of such customer. For purposes of this Agreement, the term "customer" shall be defined as a client, customer or account in existence as of the Effective Date.

12. EMPLOYEE RECRUITMENT

SCAO and BIDDER each agree that their respective employees are critical to the servicing of their customers. SCAO and BIDDER therefore agree to refrain from engaging or hiring in any capacity employees of the other during the term of this Agreement, and for a period of one year following termination thereof, unless the current employer agrees.

13. MICHIGAN LAW

This Agreement shall be subject to, and shall be enforced and construed under, the laws of the state of Michigan. Further, the Parties agree to litigate any disputes arising directly or indirectly from this Agreement in the Court of Claims in the state of Michigan. If the Court of Claims cannot take jurisdiction over the dispute, then the dispute shall be litigated in the circuit court of the SCAO's choosing.

14. DEBT TO STATE OF MICHIGAN

BIDDER covenants that it is not, and will not become, in arrears to the state of Michigan or any of its subdivisions upon contract, debt, or any other obligation, including obligations for sales and use, real property, personal property, and/or income taxes.

15. DISPUTES

The Parties shall notify one another in writing of their respective intent to pursue a claim against the other for breach of any term of this Agreement within ten (10) business days of discovery of

the alleged breach. Notice must be provided by both electronic mail and by an overnight delivery service that can track and confirm delivery as provided in Section 24 below.

Should the terms of this Agreement be litigated, the prevailing party shall be entitled to an award of all reasonable attorney fees and costs incurred, including all such fees and costs incurred on appeal.

16. GOOD STANDING

SCAO and BIDDER acknowledge that they are both in good standing in the jurisdiction of their origin.

17. CONFLICT OF INTEREST

BIDDER presently has no personal or financial interest, and shall not acquire any such interest, direct or indirect, that would conflict in any manner or degree with the performance of this Agreement.

18. SUCCESSORS AND ASSIGNMENT. BIDDER may not assign this Agreement to any other party without the prior approval of the SCAO.

19. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the Parties regarding the subject matter of this Agreement exists. This Agreement supersedes and terminates all prior agreements between the Parties relating to the subject matter herein addressed.

20. SEVERABILITY

Any provision of this Agreement that is found to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be deemed to be modified to the extent necessary to render such provision valid and enforceable; if such provision may not be so saved, it shall be severed and the remainder of the Agreement shall remain in full force and effect.

21. ACKNOWLEDGMENT

SCAO and BIDDER acknowledge the entire Agreement has been reviewed by the officer or agent whose name is subscribed below, that the terms of this Agreement are fully understood, and that all Agreement terms are acceptable.

22. AMENDMENT

This Agreement may be amended by written agreement of the Parties. If amendment to this Agreement is required to comply with federal or state laws, rules, regulations or administrative orders, the Parties will promptly enter into negotiations to meet those legal requirements.

23. EXECUTION AND AUTHORITY TO BIND. This Agreement may be executed in counterparts, each of which is deemed to be an original, and all of which taken together constitutes one and the same instrument. Each person signing this Agreement represents that he or she is duly authorized to execute this Agreement on behalf of the responsible agency or entity.

24. POINTS OF CONTACT AND NOTICE DELIVERY. To facilitate successful administration of this agreement, each party has designated a principal representative who will act as the contact person for each party in day-to-day conduct of this Agreement. Contact for discussions related to the Project will be via email or other preferred methods of communication. Further, unless otherwise provided in this Agreement, written notices and communications required under this Agreement shall be delivered in two forms: 1) by electronic mail effective as of the date of the confirmation of delivery receipt; and 2) by a nationally recognized overnight delivery service effective as of the date of the confirmation of delivery receipt. Delivery shall be to all of the contact addresses listed below. Failure to notify all Parties at all addresses mentioned means that notice is defective and does not meet the requirements of this paragraph.

A. BIDDER's Contact Information.

BIDDER's contact person:
BIDDER's mailing address:
BIDDER's e-mail address:
BIDDER's phone number:

B. The SCAO's contact person is (**both** must be used):

Charlie Mercer, Judicial Information Systems and
Alicia Moon, Supreme Court General Counsel
Mailing address for both: Charlie Mercer and Alicia Moon, State Court
Administrative Office, Michigan Hall of Justice, P.O. Box 30048, Lansing, MI,
48909
Email addresses (both must be used): mercerc@courts.mi.gov and
moona@courts.mi.gov
Phone number for Charlie Mercer: (517) 373-7344
Phone number for Alicia Moon: (517) 373-1294

BIDDER

**STATE COURT ADMINISTRATIVE
OFFICE**

Signature: _____

Signature: _____

Printed Name:

Printed Name: Elizabeth Rios

Title:

Title: Deputy State Court Administrator

Date: _____

Date: _____