

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE**  
**ADDITIONAL DEFINITIONS, TERMS, AND CONDITIONS (3.0)**  
**SPECIFIC TO INFORMATION TECHNOLOGY (IT)**

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## PART A: DEFINITIONS

All definitions contained in the Court's Standard Business Definitions, Terms, and Conditions are incorporated herein by reference.

1. **Cost to Cover:** The cost, properly mitigated, of procuring Goods or Services of equivalent capability, function, and performance.
2. **Custom Software or Custom Hardware Product:** Any hardware and/or software product specially designed, developed, and/or programmed by Contractor for use by the Court.
3. **Enhancement:** Includes any modifications, revisions, adjustments, or updates to hardware or software to correct inefficiencies or residual errors, to enhance functionality or operability, to customize user preferences, to promote compatibility among any systems of which the hardware or software is a part, and to effect any other minor changes.
4. **Equipment:** An all-inclusive term referring to the hardware and/or software to be provided under the Agreement or for which services are rendered under the Agreement.
5. **Hardware:** Usually refers to computer machines, electrical or mechanical devices, or parts thereof, and is contrasted with Software.
6. **Hardware Product:** Hardware furnished by Contractor as a distinct unit.
7. **IT:** Information technology, which includes, but is not limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite system controls, simulation, electronic commerce, and all related interactions between people and machines.
8. **Software:** An all-inclusive term which refers to any computer programs, routines, or subroutines, including operating software, programming aids, application programs, and program products.
9. **Software Product:** Software furnished by Contractor as a distinct unit.

## **PART B: IT TERMS AND CONDITIONS**

- 1. Custom Hardware or Software Products.** Unless otherwise specifically provided in the Agreement, the Court shall be deemed to have accepted each Custom Hardware or Software Product (i) upon its issuance of written notice of such acceptance; or (ii) sixty (60) days after its installation date, unless at or before that time the Court gives Contractor written notice of rejection. No payment for Custom Hardware or Software Products will be due before acceptance thereof, except to the extent required by progress payment terms in the Agreement. Any notice of rejection will explain how the Custom Hardware or Software Product fails to substantially conform to the functional and performance specifications of the Agreement. Contractor will, upon receipt of such notice, investigate the reported deficiency and exercise reasonable best efforts to remedy it promptly. The Court, in its sole discretion, will have the option to re-perform the acceptance test. If the Contractor is unable to remedy the deficiency within (60) days of notice of rejection, the Court shall have the option of accepting substitute Hardware or Software Products, or terminating for default the portion of the Agreement that relates to such Custom Hardware or Software Products, or terminating the Agreement in its entirety for default.
- 2. Enhancements; Upgrades; Losses.**

  - A. Enhancements. During the term of the Agreement, unless otherwise provided in the Agreement, as soon as any Enhancement applicable to any of the Goods or Services provided under the Agreement, is reasonably reduced to practice, such Enhancement shall be included as part of the license granted, and Contractor shall accordingly incorporate such Enhancement in the Goods or Services provided under the Agreement; provided that such Enhancement is compatible with the Court's existing hardware or software configuration as verified by Contractor and such Enhancement is approved by the Court prior to their incorporation. Such incorporation shall be performed by Contractor without additional charge to the Court.
  - B. Upgrades. Unless otherwise provided in the Agreement, for any improved or upgraded versions of any Goods or Services under the Agreement that are developed by Contractor and are made available to other licensees, such versions will be made available to the Court at the Court's option, provided such versions are compatible with the Court's existing hardware or software configuration as verified by Contractor, at a price no greater than the difference between (i) the price established by the Contractor for the later version; and (ii) the prevailing price or the price specified under the Agreement, whichever is greater, of the version provided by Contractor under the Agreement.
  - C. Losses. Contractor shall endeavor to ensure that there is no material loss of functionality and/or performance of the Goods or Services due to any Enhancements or Upgrades made by Contractor, and the Enhancements or Upgrades are incorporated in such a way as not to cause any material fault or malfunction in the Goods or Services. If there is any loss in functionality, performance, fault or malfunction, then at the Court's option and at no cost to the Court, Contractor shall roll back the Goods or Services to the state it was in before the Enhancement or Upgrade was incorporated.
- 3. License; Title to Equipment.**

A. Unless otherwise provided in the Agreement:

- (1) Contractor grants to the Court and the Court accepts from Contractor, subject to the terms and conditions of the Agreement, a royalty-free, non-exclusive, non-transferable, worldwide license to use the Goods and Services listed in the Agreement.
- (2) Contractor may own or hold a license to use and/or sublicense various hardware or software in existence prior to the start date of the Agreement ("Contractor's Materials"). Contractor's Materials may include designs, utilities, and all related materials, as well as programming, consulting, creative and marketing ideas, development tools, routines, sub-routines, algorithms, software, engines, source code, object code, and other programs, data and materials, and any modifications, enhancements, and derivative works thereto. Contractor may, at its option, include Contractor's Materials in the Work performed under the Agreement. If so, Contractor retains all right, title, and interest to all copyrights, patent rights, and trade secret rights in Contractor's Materials; provided that Contractor grants and the Court hereby accepts from Contractor, a royalty-free, non-exclusive, non-transferable, worldwide license to use any of Contractor's Materials incorporated into the Work performed by Contractor under the Agreement.

B. The Court, and any division thereof, may use the Goods and Services in the conduct of its own business.

C. With respect to Software Products furnished by Contractor as listed in the Agreement, the license above authorizes the Court to use such Software Products in machine-readable form on any Court computer or computer system; provided however, that no more than the number of machine-readable copies of the Software Products if specified in the Agreement will be in existence at any one time without Contractor's prior written consent, not to be unreasonably withheld.

D. Title to all Custom Software and Custom Hardware furnished by Contractor shall pass to the Court upon the Court's acceptance of the same. Title to other Software or Hardware Product furnished by Contractor shall also pass to the Court upon the Court's acceptance of the same, unless the Agreement expressly provides that the Hardware or Goods are rented, leased, or licensed to the Court such that title thereto will remain with Contractor. Title to special features installed on a Hardware Product and for which only a single installation charge was paid shall pass to the Court at no additional charge, together with title to the Hardware Product on which it was installed.

**4. Liquidated Damages.**

A. In the event that Contractor fails to complete Work in accordance with the Agreement within the time parameters as specified therein, and fails to provide suitable substitutions of Work acceptable to the Court, the Parties agree that the delay will interfere with the proper implementation of the Court's operations or programs to the loss and damage of the Court. From the nature of the case, it may be impracticable and extremely difficult to fix the actual damages

sustained in the event of any such delay. The Court and Contractor, therefore, presume that in the event of any such delay, the amount of damage which will be sustained from such delay and payable to the Court as liquidated damages and not as a penalty shall be \$500 for each and every day's delay in excess of the allotted time parameters set forth in the Agreement. In the event Contractor fails to pay such liquidated damages, the Court may deduct the amount from any money payable to Contractor under the Agreement.

- B. If Contractor is delayed by reason of force majeure events, change orders or stop orders, or additional Work requested by the Court, or delays directly caused by the Court, the time of Contractor's performance may be extended commensurately by written agreement by the Court's Project Manager, and Contractor shall be relieved of paying liquidated damages for the period of such extension.
- C. Although the Court, at its option, may waive the payment of liquidated damages, nothing herein shall be construed as affording Contractor any additional time for performance. The Court shall notify Contractor in writing of any claim for liquidated damages pursuant to this section on or before the date the Court deducts such sums from money payable to Contractor.

#### **5. Manuals and Printed Materials.**

- A. Contractor agrees to provide to the Court, at no charge, all nonproprietary or proprietary manuals and other printed materials, and updated versions thereof, which are necessary or useful to the Court in its use of the Goods or Services provided for in the Agreement. If additional copies of such manuals or printed materials are requested by the Court, Contractor will provide such additional materials at prices not in excess of prices charged by Contractor to its best customers for similar materials.
- B. If Contractor is unable to perform maintenance or the Court obtains Contractor's consent to perform its own maintenance on Equipment under the Agreement, then upon written notice by the Court, Contractor will provide adequate and reasonable assistance including relevant documentation to allow the Court to maintain the Equipment based on Contractor's methodology. Contractor agrees that the Court may reproduce such documentation for its own use in maintaining the Equipment. If Contractor is unable to perform maintenance, Contractor agrees to license any other contractor that the Court may hire to maintain the Equipment to use the above noted documentation. The Court shall not remove, alter, cover, or obliterate any copyright notices on any such documentation reproduced.

#### **6. Patents, Copyrights, and Trade Secrets.**

- A. Contractor warrants that the Goods or Services, and any component thereof, furnished by Contractor under the Agreement shall not infringe upon the intellectual property rights of the Court or any third party. Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of the Agreement.
- B. Contractor further warrants that (i) any Hardware or Software Product as modified by Contractor under the Agreement will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party; and (ii) Contractor has the appropriate systems and controls in place to ensure that Court funds will not be used to acquire, operate, maintain, or modify any Hardware or Software Product in violation of any U.S. intellectual property right or law.

## **7. Patent, Copyright, and Trade Secret Indemnity.**

- A. Contractor will indemnify, defend (with counsel satisfactory to the JBE Office of General Counsel), and save harmless the Court and Court Personnel, from any and all third party claims, damages, penalties, expenses, costs (including attorneys' fees), and losses arising or resulting from, or in connection with any alleged or actual infringement, misappropriation, or violation of any U.S. intellectual property right or proprietary right of any third party in any Goods or Services, or component thereof, furnished by Contractor in connection with the Agreement.
- B. Should either party become aware of a legal action related to, or affecting, the Work furnished under the Agreement, that party shall notify the other party of the action, and the Court shall tender the defense thereof within a reasonable time. Contractor shall have control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that: (i) Contractor shall confer and cooperate with the Court in such defense; (ii) the Court, at its option, may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); and (iii) the Court will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed. Contractor may be required to furnish a bond to the Court against any and all loss, damage, costs, expenses, claims, and liability for any alleged or actual infringement, misappropriation, or violation of any U.S. intellectual property right or proprietary right of a third party.
- C. With respect to claims arising from hardware or software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to the Court such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the Court with indemnity protection at least equal to that called for by the Third Party Obligation, or at the Court's option, the indemnity protection provided above in the Agreement.
- D. Should any of the Goods or Services, or any component thereof, become, or in Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. intellectual property right, Contractor shall provide written notice to the Court. The Court shall permit Contractor at its option and expense either to procure for the Court the right to continue using the Goods or Services, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Goods or Services by the Court shall be prevented by injunction, Contractor agrees to take back such Goods or Services and make every reasonable effort to assist the Court in procuring substitute Goods or Services. If, in the sole opinion of the Court, the return of such infringing Goods or Services makes the retention of other hardware or software acquired from Contractor impractical, the Court shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge. Contractor agrees to take back such Goods or Services and refund any sums the Court has paid Contractor less any reasonable amount for use or damage.

- 8. Return of Confidential Information.** Upon cancellation, expiration, or termination of the Agreement, or at any other time upon the Court's request, Contractor shall promptly return to the Court any

Confidential Information belonging to the Court remaining in Contractor's possession. Confidential Information shall be clearly marked and submitted separately, and not embedded in any of Contractor's Work Product. Contractor shall, at the Court's option, destroy all materials in Contractor's possession containing such Confidential Information.

#### **9. Rights in Data; Right to Copy or Modify.**

- A. Rights in Data. All electronic files, input or output data, the media upon which such files and data are located (e.g., cards, tapes, discs, and other storage mediums), and all Software Products and packages (together with related documentation, source codes, object codes, upgrades, revisions, and modifications thereto), which are utilized, prepared, or developed for and paid for by the Court and delivered to the Court shall be property of the Court. Contractor may not distribute or otherwise disclose to third parties any data inputted or uploaded by the Court in its use of any Software or Hardware Product.
  
- B. Right to Copy or Modify. Any Software Product provided by Contractor in machine-readable form may be copied, in whole or in part, in printed or machine-readable form for use by the Court to perform one-time benchmark tests, for archival or emergency restart purposes, to replace a worn copy, to understand the contents of such machine-readable material, or to modify the Software Product; provided, however, that no more than the number of printed copies and machine-readable copies as specified in the Agreement will be in existence at any one time without Contractor's prior written consent, not be unreasonably withheld. The Court may modify any non-personal computer Software Product, in machine-readable form, for its own use and merge it into other program material; provided that nothing in this subsection will be construed to contradict the terms of any separately applicable third party license agreement.

#### **10. Rights in Work Product.**

- A. Unless otherwise provided in the Agreement, Contractor shall be deemed the sole author and patent and/or copyright owner of all inventions, discoveries, intellectual property, or technical communications originated or prepared solely by Contractor pursuant to the Agreement including papers, reports, charts, computer programs, and other documentation or improvements thereto (collectively, the "Work Product").
  
- B. Software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of the Agreement ("Pre-Existing Materials") do not constitute Work Product. If Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to the Agreement constitute Work Product, but other elements do not. Nothing in this section will be construed to interfere with Contractor's or its affiliates' ownership of Pre-Existing Materials.
  
- C. Contractor grants and the Court hereby accepts Government Purpose Rights to the Work Product as furnished to the Court hereunder. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. "Government Purpose Rights" also include the right to release or disclose the Work

Product outside the Court for any Court or government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any Court or government purpose. Such recipients of the Work Product may include, without limitation, the Court's contractors, California state and local governments, the U.S. federal government, and the Court's Personnel. Government Purpose Rights do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose.

- D. All inventions, discoveries, intellectual property, technical communications, ideas, concepts, know-how, techniques relating to data processing, and records developed, originated, or prepared during the course of the Agreement jointly by Contractor and the Court may be used by either party without obligation of notice or accounting.

## **11. Training; Technical Support.**

- A. **Training.** Unless otherwise provided in the Agreement or in an implementation plan schedule agreed upon by the parties, Contractor shall provide technical and/or end user training (e.g., non-technical or functional) to enable Court Personnel to productively use the Goods or Services furnished under the Agreement. Contractor shall provide overview training prior to placing any Goods or Services into operational use and comprehensive user training upon installation and start-up in accordance with the Agreement or implementation plan schedule. All training shall be conducted by qualified Contractor personnel during regular business hours at Court locations or at mutually agreed-upon locations.
- B. **Technical Support.** Unless otherwise provided in the Agreement, Contractor shall also maintain and provide for the Court's unlimited use, a live "Helpdesk" that is available online or by phone for immediate troubleshooting, training, and/or diagnostics on issues affecting the Goods or **Services**. If the issue requires an on-site technician for repair, the Helpdesk shall gather the necessary information to promptly dispatch a qualified technician who is equipped to train and/or customize the system to the Court's needs.
- C. Unless otherwise provided in the Agreement, all costs, including travel expenses, associated with the provision of such training or technical support are included in the total Agreement Amount.

## **12. Warranties (IT).**

- A. **General Warranty.** Contractor warrants that the Work furnished hereunder will (i) substantially conform to the requirements of the Agreement (including without limitation all descriptions, specifications, and drawings identified); and (ii) be free from material defects in materials and workmanship. Contractor further warrants that Work shall be performed in a professional manner, in accordance with the highest applicable professional standards, using qualified personnel having a level of skill and experience in the area commensurate with the requirements of the Agreement, and in accordance with industry standards.

B. Pass Through of Warranties. Where Contractor resells hardware or software it purchased from a third party, and such third party offers additional or more advantageous warranties than those set forth herein, Contractor will pass through any such warranties to the Court and will reasonably cooperate in enforcing them. Such warranty pass-through will be supplemental to, and not relieve Contractor from, Contractor's warranty obligations set forth in the Agreement.

C. Scope of Warranties.

(1) All warranties, including special warranties specified elsewhere herein, shall inure to the Court, its successors, assigns, customer agencies, court users, and governmental users of the Goods or Services.

(2) Unless otherwise specified in the Agreement, the warranties in this section begin upon acceptance of the Work and end one (1) year thereafter.

D. Special Warranty Provisions Relating to Software.

(1) In addition to the other warranties set forth herein, where the Agreement involves the furnishing of software (regardless of whether such software is installed on the Court's systems or accessible via an online interface), Contractor warrants that such software (i) is free of harmful code (e.g., viruses, worms) and will run without material interruption; (ii) will perform in accordance with its license and accompanying documentation; and (iii) will not cause any material fault, loss, or malfunction in the Court's existing systems. The Court's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.

(2) Contractor warrants that Contractor will not cause any unplanned interruption in the operations of, or accessibility to, any software furnished under the Agreement or any portion thereof through any device, method, or means including, without limitation, the use of any virus, worm, "lockup," "time bomb," or "key lock" device or program, or other disabling code, which (i) has the potential or capability of causing any unplanned interruption in the operations of, or accessibility of any Goods or Services or any portion thereof; (ii) could alter, destroy, or inhibit use of any Goods or Services or any portion thereof; or (iii) which could block access to or prevent use of any Goods or Services or any portion thereof by the Court or its users (collectively, "Disabling Device(s)"). Contractor further represents and warrants that it has not purposely placed, nor is it aware of, any Disabling Device on any portion of the Goods or Services furnished to the Court under the Agreement, nor shall Contractor knowingly permit any subsequently delivered portion of the Goods or Services to contain any Disabling Device. Without limiting the foregoing, if the Court believes that harmful code may be present in any software delivered hereunder, Contractor will, upon the Court's request, provide a master copy of the software for comparison and correction.

E. Other Warranties.

(1) Contractor warrants that it has the full right and authority to grant all licenses, including perpetual licenses, set forth in the Agreement.

(2) Additional warranties by Contractor are specified in other provisions of the Agreement.

F. Remedies.

(1) Contractor shall indemnify, defend (with counsel satisfactory to the Court), and hold harmless the Court and Court Personnel from and against any and all claims, damages, losses, judgments, liabilities, expenses, and other costs, including court fees, litigation or settlement costs, and attorneys' fees, arising or resulting from or in connection with Contractor's breach of the warranties set forth in the Agreement.

(2) If, during the warranty period, the Court discovers that the Work performed by Contractor under the Agreement has not been performed in accordance with the warranties herein and notifies the Contractor in writing of such faulty Work, then at the Court's option: (i) Contractor shall, without cost to the Court, perform any services necessary to correct the fault therein, including the repair or replacement of any nonconforming Goods or Services; or (ii) Contractor shall refund all amounts paid by the Court for the nonconforming Goods or Services and pay to the Court any amounts necessary to equal the Court's Cost to Cover.

(3) The rights and remedies in the above warranty clauses are in addition to any other rights or remedies, provided in law, equity or under the Agreement.

**13. Miscellaneous Provisions Applicable to Specific Contracting Situations.**

A. IT Maintenance Agreements.

(1) Contractor shall keep Equipment in good operating condition and shall always be responsive to the maintenance requirements of the Court.

(2) Unless otherwise provided in the Agreement:

(a) Maintenance services shall include scheduled preventative maintenance and unscheduled, on-call remedial maintenance. Preventative maintenance shall be performed on a schedule which is mutually acceptable to the Court and Contractor, which is consistent with the Court's operating requirements, and which is based upon the specific needs of the Equipment as determined by the manufacturer of the Equipment. Remedial maintenance shall be commenced promptly after notification by the Court that the Equipment and/or software is inoperative or otherwise in need of maintenance.

(b) Maintenance parts shall be furnished by Contractor and shall be equivalent to new in performance when properly used. Replacement maintenance parts shall become property of the Court.

- (c) Contractor shall not charge the Court for any travel expenses associated with the provision of maintenance services.
  
- (d) Contractor shall grant a proportionate maintenance credit or a pro-rata refund of the Compensation paid under the Agreement on any Equipment that is inoperative for consecutive scheduled work periods totaling 24 hours from the time the Court notifies the Contractor the Equipment was inoperative or otherwise in need of maintenance, provided (i) the Equipment became inoperative or is in need of maintenance through no fault of the Court; and (ii) the breakdown was attributable to equipment failure.
  
- (e) In the event the Equipment maintained under the Agreement is moved to another location within the County of Riverside, Contractor shall continue to maintain the Equipment at the new location(s) at no additional cost to the Court, with the exception of additional mileage expenses, which the Court will reimburse at rates that are mutually acceptable to both Parties. The Court may request Contractor to dismantle, pack, and re-install the Equipment at the new location(s) at rates that are mutually acceptable to both Parties.

**END OF INFORMATION TECHNOLOGY (IT) DEFINITIONS, TERMS AND CONDITIONS (3.0)**