



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

1. Agenda Item Number:

33

2. Council Meeting Date:
October 13, 2016

TO: MAYOR AND COUNCIL

3. Date Prepared: September 29, 2016

THROUGH: CITY MANAGER

4. Requesting Department: Magistrate

5. SUBJECT: Agreement with nCourt, LLC, for Payment Processing and Customer Call Center Services

6. RECOMMENDATION: Staff recommends City Council approve the utilization of the Arizona Office of the Courts Contract No. 2015-00000022, with nCourt, LLC, for payment processing and customer call center services, for the term of December 1, 2016, through February 26, 2018, with the option of up to seven one-year extensions.

7. BACKGROUND/DISCUSSION:

The Chandler Municipal Court is interested in providing online payment processing to its customers through nCourt – a provider of electronic payment services. The court recognizes that providing citizens the ability to pay criminal or traffic fines, fees and costs by adding online and phone payment options will improve efficiencies and reduce the frustration our citizens experience with the current limited payment options. Although the City of Chandler has InvoiceCloud as the City’s enterprise electronic payment vendor for multiple city departments, the nCourt product is designed specifically for court operations and is currently utilized by other Arizona courts. In addition, nCourt offers full chargeback protection, guaranteed funds which allows credit card acceptance of more fee types such as bonds and restitution/contribution, multiple payment options i.e. online, over the counter, on the phone, etc.), and a bilingual, U.S. based call center with extended hours of operation increasing the availability of court information and payment options for the citizen. It should be noted that nCourt’s solution is provided at no cost to the City. The service fee is paid by the customer making the payment.

8. EVALUATION: The Arizona Office of the Courts (AOC) competitively solicited and awarded a contract for payment processing services with the option of customer call center services. The AOC contract contains the appropriate language allowing for the City’s cooperative use of its contracts.

Staff recommends cooperative use of this contract because nCourt, LLC’s suite of services are designed for use by courts. In addition, nCourt, LLC offers service features to the Court’s customers not available through other payment processors such as live telephone customer service and telephonic, e-mail, and SMS reminders of payments due.

The term of the AOC’s contract is February 27, 2015, through February 26, 2018, with the option of up to seven one-year extensions.

9. FINANCIAL IMPLICATIONS: There is no charge to the City. Fees will be assessed by the Contractor at 5% of payment amount to customers who choose to make payment using a credit/debit card on-line or in person.

10. PROPOSED MOTION: Move City Council approve the utilization of the Arizona Office of the Courts Contract No. 2015-00000022, with nCourt, LLC, for payment processing and customer call center services, for the term of December 1, 2016, through February 26, 2018, with the option of up to seven one-year extensions.

ATTACHMENTS: Agreement

APPROVALS

11. Requesting Department


Carla Boatner, Court Administrator

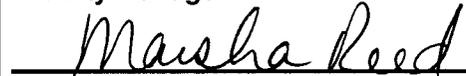
13. Department Head


Michael Traynor, Presiding Magistrate

12. Procurement Officer


Christina Pryor, Purchasing Manager

14. City Manager


Marsha Reed

**CITY OF CHANDLER SERVICES AGREEMENT
CITY COURT PAYMENT PROCESSING SERVICES
AGREEMENT NO.: 3665**

THIS AGREEMENT is made and entered into this 24 day of Sept., 2016, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "City", and nCourt, LLC, hereinafter referred to as "Contractor".

WHEREAS, Contractor represents that Contractor has the expertise and is qualified to perform the services described in the Agreement.

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. AGREEMENT ADMINISTRATOR:

- 1.1. **Agreement Administrator.** Contractor shall act under the authority and approval of the City Magistrate or designee (Agreement Administrator), to provide the services required by this Agreement.
- 1.2. **Key Staff.** This Agreement has been awarded to Contractor based partially on the key personnel proposed to perform the services required herein. Contractor shall not change nor substitute any of these key staff for work on this Agreement without prior written approval by City.
- 1.3. **Subcontractors.** During the performance of the Agreement, Contractor may engage such additional Subcontractor as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with Contractor.
- 1.4. **Subcontracts.** Contractor shall not enter into any Subcontract under this Agreement for the performance of this Agreement without the advance written approval of City. The subcontract shall incorporate by reference the terms and conditions of this Agreement.

2. SCOPE OF WORK: Contractor shall provide an electronic payment processing services and customer service call center services, all as more specifically set forth in Exhibit A, Scope of Work and pursuant to the Arizona Supreme Court, Administrative Office of the Courts Contract No. 2015-0000022, attached hereto and made a part hereof by reference.

- 2.1 **Non-Discrimination.** The Contractor shall comply with all applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.
- 2.2 **Licenses.** Contractor shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this agreement.
- 2.3 **Advertising, Publishing and Promotion of Agreement.** The Contractor shall not use, advertise or promote information for commercial benefit concerning this Agreement without the prior written approval of the City.
- 2.4 **Compliance with Applicable Laws.** Contractor shall comply with all applicable Federal, state and local laws, and with all applicable licenses and permit requirements.
 - 2.4.1 The Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("subcontractors") will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify, hereinafter "Contractor Immigration Warranty".

2.4.2 A breach of the Contractor Immigration Warranty shall constitute a material breach of this Agreement that is subject to penalties up to and including termination of the agreement.

2.4.3 The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Agreement to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.

2.4.4 The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The Contractor agrees to assist the City in performing any such random verification.

2.4.5 The provisions of this Article must be included in any agreement the Contractor enters into with any and all of its subcontractors who provide services under this Agreement or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

3. ACCEPTANCE AND DOCUMENTATION: Each task shall be reviewed and approved by the Agreement Administrator to determine acceptable completion.

3.1. Records. The Contractor shall retain and shall contractually require each Subcontractor to retain all data and other "records" relating to the acquisition and performance of the Agreement for a period of five years after the completion of the Agreement.

3.2. Audit. At any time during the term of this Agreement and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Agreement or Subcontract. Upon request, the Contractor shall produce a legible copy of any or all such records.

3.3. New/Current Products. All equipment, materials, parts and other components incorporated in the work or services performed pursuant to this Agreement shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.

3.4. Property of City. Any materials, including reports, computer programs and other deliverables, created under this Agreement are the sole property of City. Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. Contractor shall not use or release these materials without the prior written consent of City.

4. PRICE:

4.1. Fees for services shall be assessed by the Contractor to citizens making use of the services provided by the Contractor from the party the per-unit cost as set forth in Exhibit B, attached hereto and made a part hereof by reference.

4.2. Taxes. Contractor shall be solely legally responsible for any and all tax obligations, which may result out of Contractor's performance of this Agreement. City shall have no legal obligation to pay any amounts for taxes, of any type, incurred by Contractor. City agrees that Contractor may bill the City for applicable privilege license taxes which are paid for by Contractor and that the City will reimburse Contractor for privilege license taxes actually paid by Contractor. If Contractor obtains any refund of privilege license taxes paid, City will be entitled to a refund of such amounts.

4.3. **Payment.** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or completion of specified services and receipt of a correct invoice. Any quantities shown are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by City. City reserves the right to increase or decrease the quantities actually required.

4.4. **IRS W9 Form.** In order to receive payment Contractor shall have a current I.R.S. W9 Form on file with City, unless not required by law.

4.5. **Price Adjustment in Extension Terms.** All prices offered herein shall be firm against any increase for the initial term of the Agreement. Prior to commencement of subsequent renewal terms, City may approve a fully documented request for a price adjustment. The City shall determine whether any requested price increases for extension terms is acceptable to the City. If City approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon by the Parties a written Agreement Amendment shall be approved and executed by the Parties.

4.6. **Price Reduction.** Contractor shall offer City a price reduction for its services concurrent with a published price reduction made to other customers.

5. **TERM:**

5.1. The term of the Agreement will commence on December 1, 2016 and terminate on February 26, 2018 unless sooner terminated in accordance with the provisions herein. City reserves the right, at its sole discretion, to extend the Agreement for up to seven additional terms of one year each. The Presiding Magistrate of the Chandler Municipal Court is authorized to execute such extensions which shall be filed with the City Clerk of the City of Chandler.

6. **USE OF THIS AGREEMENT:** The Agreement is for the sole convenience of the City of Chandler. City reserves the rights to obtain like services from another source to secure significant cost savings or when timely completion cannot be met by Contractor.

6.1. **Cooperative Use of Agreement.** In addition to the City of Chandler and with approval of the Contractor, this Agreement may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

If required to provide services on a school district property at least five (5) times during a month, Contractor shall submit a full set of fingerprints to the school of each person or employee who may provide such service. The District shall conduct a fingerprint check in accordance with A.R.S. 41-1750 and Public Law 92-544 of all Contractors, subcontractors or vendors and their employees for which fingerprints are submitted to the District. Additionally, the Contractor shall comply with the governing body fingerprinting policies of each individual school district/public entity. Contractor, sub-contractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City shall not be responsible for any disputes arising out of transactions made by other agencies who utilize this Agreement.

- 6.2 **Emergency Purchases:** City reserves the rights to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the Contractor.
- 6.3 **Non-Exclusive Agreement:** This agreement is for the sole convenience of the City of Chandler. The City reserves the right to obtain like goods or services from another source when necessary.
- 6.4 **Exclusive Possession:** All services, information, computer program elements, reports and other deliverables created under this Agreement are the sole property of the City of Chandler and shall not be used or released by the Contractor or any other person except with prior written permission by the City.

7. CITY'S CONTRACTUAL REMEDIES:

- 7.1 **Right to Assurance.** If the City in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Agreement, the Agreement Administrator may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Agreement in addition to any other rights and remedies provided by law or this Agreement.
- 7.2 **Stop Work Order.** The City may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Agreement for period(s) of days indicated by the City after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 7.3 If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Agreement Administrator shall make an equitable adjustment in the delivery schedule or Agreement price, or both, and the Agreement shall be amended in writing accordingly.
- 7.4 **Non-exclusive Remedies.** The rights and the remedies of the City under this Agreement are not exclusive.
- 7.5 **Nonconforming Tender.** Services and materials supplied under this Agreement shall fully comply with Agreement requirements and specifications. Services or materials that do not fully comply constitute a breach of agreement.
- 7.6 **Right of Offset.** The City shall be entitled to offset against any sums due Contractor, any expenses or costs incurred by the City, or damages assessed by the City concerning the Contractor's non-conforming performance or failure to perform the Agreement, including expenses to complete the work and other costs and damages incurred by City.

8. TERMINATION:

- 8.1.1 **Termination for Convenience:** City reserves the right to terminate this Agreement or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, Contractor shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subcontractors to cease such work. As compensation in full for services performed to the date of such termination, the Contractor shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the Contractor and City, based on the agreed Scope of Work. If there is no mutual agreement, the Management Services Director or designee shall determine the percentage of work performed under each task detailed in the Scope of Work and the

Contractor" compensation shall be based upon such determination and Contractor's fee schedule included herein.

8.1.2 Termination for Cause: City may terminate this Agreement for Cause upon the occurrence of any one or more of the following events:

- 1) If Contractor fails to perform pursuant to the terms of this Agreement
- 2) If Contractor is adjudged a bankrupt or insolvent;
- 3) If Contractor makes a general assignment for the benefit of creditors;
- 4) If a trustee or receiver is appointed for Contractor or for any of Contractor's property;
- 5) If Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
- 6) If Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;

Where Agreement has been so terminated by City, the termination shall not affect any rights of City against Contractor then existing or which may thereafter accrue.

8.3. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, City may cancel this Agreement after Agreement execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is or becomes at any time while this Agreement or an extension of this Agreement is in effect, an employee of or a consultant to any other party to this Agreement. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time.

8.4. Gratuities. City may, by written notice, terminate this Agreement, in whole or in part, if City determines that employment or a Gratuity was offered or made by Contractor or a representative of Contractor to any officer or employee of City for the purpose of influencing the outcome of the procurement or securing this Agreement, an amendment to this Agreement, or favorable treatment concerning this Agreement, including the making of any determination or decision about agreement performance. The City, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by Contractor.

8.5. Suspension or Debarment. City may, by written notice to the Contractor, immediately terminate this Agreement if City determines that Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of an agreement shall attest that the Contractor is not currently suspended or debarred. If Contractor becomes suspended or debarred, Contractor shall immediately notify City.

8.6. Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Agreement, up to the date of termination, as directed in the termination notice.

8.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Agreement shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

8.8. Availability of Funds for the next Fiscal Year. Funds may not presently be available under this Agreement beyond the current fiscal year. No legal liability on the part of the City for services may arise under this Agreement beyond the current fiscal year until funds are made available for performance of this Agreement. The City may reduce services or terminate this Agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.

9. **FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.
10. **DISPUTE RESOLUTION:**
- 10.1. **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 10.2. **Jurisdiction and Venue.** The parties agree that this Agreement is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.
- 10.3. **Fees and Costs.** Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees.
11. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City and any of its elected or appointed officials, officers, directors, commissioners, board members, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties and fines (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the City by reason of this Contract/Agreement or the services performed or permissions granted under it, or related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Contractor, or any of its subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this Contract/Agreement, including but not limited to, any injury or damages claimed by any of Contractor's and subcontractor's employees.
12. **INSURANCE**
- 12.1. General.
- A. At the same time as execution of this Agreement, the Contractor shall furnish the City of Chandler a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to City. Provided, however, the A.M. Best rating requirement shall not be deemed to apply to required Workers' Compensation coverage.
- B. The Contractor and any of its subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, the insurances set forth below.
- C. The insurance requirements set forth below are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.
- D. The City in no way warrants that the minimum insurance limits contained in this Agreement are sufficient to protect Contractor from liabilities that might arise out of the performance of the

Agreement services under this Agreement by Contractor, its agents, representatives, employees, subcontractors, and the Contractor is free to purchase any additional insurance as may be determined necessary.

- E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve the Contractor from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Agreement.
- F. Use of Subcontractors: If any work is subcontracted in any way, the Contractor shall execute a written contract with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of the Contractor in this Agreement. The Contractor is responsible for executing the Agreement with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.

12.2. Minimum Scope and Limits of Insurance. The Contractor shall provide coverage with limits of liability not less than those stated below.

- A. *Commercial General Liability-Occurrence Form.* Contractor must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each occurrence, \$4,000,000 aggregate. Said insurance must also include coverage for products and completed operations, independent contractors, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.
- B. *Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles Vehicle Liability:* Contractor must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on Contractor owned, hired, and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Agreement. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be "follow form" equal or broader in coverage scope than underlying insurance.
- C. *Workers Compensation and Employers Liability Insurance:* Contractor must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor employees engaged in the performance of work or services under this Agreement and must also maintain Employers' Liability insurance of not less than \$1,000,000 for each accident and \$1,000,000 disease for each employee.
- D. *Professional Liability (Errors and Omissions Liability) including Cyber Liability.* The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this Agreement.

In the event that the professional liability insurance required by this Agreement is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Agreement is completed.

If such insurance is maintained on an occurrence form basis, Contractor shall maintain such insurance for an additional period of one (1) year following termination of Agreement. If such insurance is maintained on a claims-made basis, Contractor shall maintain such insurance for an additional period of three (3) years following termination of the Agreement.

If Contractor contends that any of the insurance it maintains pursuant to other sections of this clause satisfies this requirement (or otherwise insures the risks described in this section), then Contractor shall provide proof of same.

The insurance shall provide coverage for the following risks:

1. Liability arising from theft, dissemination and / or use of confidential information (a defined term including but not limited to bank account, credit card account, personal information such as name, address, social security numbers, etc. information) stored or transmitted in electronic form.
2. Network Security Liability arising from the unauthorized access to, use of or tampering with computer systems including hacker attacks, inability of an authorized third party, to gain access to your services including denial of service, unless caused by a mechanical or electrical failure.
3. Liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network or similar computer related property and the data, software, and programs thereon.

Additional Requirements:

- a. The policy shall provide a waiver of subrogation
- b. The policy shall be endorsed to include the following additional insured language:
"The City of Chandler, its subsidiary, parent, associated and/or affiliated entities, successors, or assigns, its elected officials, trustees, employees, agents, and volunteers shall be named as additional insureds with respect to liability arising out of the activities performed by, or on behalf of the Contractor".
- c. Minimum Limits:
Per Loss \$3,000,000
Aggregate \$3,000,000

- E. *Crime Coverage:* Coverage shall include employee dishonesty, forgery or alteration and computer fraud.

If Contractor is physically located on City premises, third party fidelity coverage extension shall apply.

The policy shall include coverage for all directors, officers, agents and employees of the Contractor.

- a. The bond or policy shall include coverage for extended theft and mysterious disappearance.
- b. The bond or policy shall not contain a condition requiring an arrest and conviction.
- c. Limits:
Per Loss \$1,000,000

12.3. Additional Policy Provisions Required.

- A. *Self-Insured Retentions or Deductibles.* Any self-insured retentions and deductibles must be declared and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.
- B. *City as Additional Insured.* The policies are to contain, or be endorsed to contain, the following

provisions:

1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the Contractor including the City's general supervision of the Contractor; Products and Completed operations of the Contractor; and automobiles owned, leased, hired, or borrowed by the Contractor.
2. The Contractor's insurance must contain broad form contractual liability coverage and must not exclude liability arising out of explosion, collapse, or underground property damage hazards ("XCU") coverage.
3. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Agreement.
4. The Contractor's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by the Contractor and must not contribute to it.
5. The Contractor's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
6. Coverage provided by the Contractor must not be limited to the liability assumed under the indemnification provisions of this Agreement.
7. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the Contractor for the City.
8. The Contractor, its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Agreement for a minimum period of 3 years following completion and acceptance of the Work. The Contractor must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this 3 year period containing all the Agreement insurance requirements, including naming the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.
9. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement.

C. *Insurance Cancellation During Term of Contract/Agreement.*

1. If any of the required policies expire during the life of this Contract/Agreement, the Contractor must forward renewal or replacement Certificates to the City within 10 days after the renewal date containing all the required insurance provisions.
2. Each insurance policy required by the insurance provisions of this Contract/Agreement shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to Chandler Law-Risk Management Department, Post Office Box 4008, Mailstop 628, Chandler, Arizona 85225. If any insurance company refuses to provide the

required notice, the Contractor or its insurance broker shall notify the City of any cancellation, suspension, non-renewal of any insurance within seven (7) days of receipt of insurers' notification to that effect.

13. **NOTICES:** All notices or demands required to be given pursuant to the terms of this Agreement shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of the City

Agreement Administrator: Carla Boatner,
Court Administrator
Contact: Carla Boatner,
Court Administrator
Mailing Address: Mail Stop 302
PO Box 4008
Chandler, AZ 85244
Physical Address: 200 E. Chicago St.
City, State, Zip: Chandler, AZ 85225
Phone: 480 782 4700
Email: Carla.boatner@chandleraz.gov

In the case of the Contractor

Firm Name: nCourt, LLC
Contact: Michael Fodor
Address: 3545 E. Ventana Canyon
Dr.
City, State, Zip: Tucson, AZ 85718
Phone: 678 214 6172
Email: mfodor@ncourt.com

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

14. **CONFLICT OF INTEREST:**

- 14.1. **No Kickback.** Contractor warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the City has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in Contractor's proposal to the City.

- 14.2. **Kickback Termination.** City may cancel any agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a Contractor to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from City is received by all other parties, unless the notice specifies a later time (A.R.S. §38-511).

- 14.3. **No Conflict:** Contractor stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.

15. **GENERAL TERMS:**

- 15.1. **Ownership.** All deliverables and/or other products of the Agreement (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by Contractor in performance of the Agreement) shall be the sole, absolute and exclusive property of City, free from any claim or retention of right on the part of Contractor, its agents, sub-contractors, officers or employees.

- 15.2. Entire Agreement.** This Agreement, including all Exhibits attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.
- 15.3. Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the City.
- 15.4. Amendments.** The Agreement may be modified only through a written Agreement Amendment executed by authorized persons for both parties. Changes to the Agreement, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the City in writing or made unilaterally by the Contractor are violations of the Agreement. Any such changes, including unauthorized written Agreement Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Agreement based on such changes.
- 15.5. Independent Contractor.** The Contractor under this Agreement is an independent Contractor. Neither party to this Agreement shall be deemed to be the employee or agent of the other party to the Agreement.
- 15.6. No Parole Evidence.** This Agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 15.7. Authority:** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this 29
day of Sept., 2016.

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

Mayor

By: Kathleen Miller
Signature

Approved as to form:

ATTEST: If Corporation

City Attorney [Signature]

Secretary

ATTEST:

City Clerk

SEAL

**EXHIBIT A
SCOPE OF WORK**

1. The Contractor shall provide an online payment processing solution to the Chandler Municipal Court in accordance with the standards and specifications of the Statewide Arizona Courts Electronic Payment Processing System Contract No. 2015-00000022 attached to this Agreement as Exhibit D.
2. The Contractor shall build, host and maintain a Chandler Municipal Court-specific website(s) for online payments for Chandler Municipal Court. The Contractor will purchase a URL, for Chandler Municipal Court. All costs for development, hosting, application, processing, customer service and merchant fees related to the Program are underwritten by user fees for services.
3. The Contractor will provide the Chandler Municipal Court with 4 Ingenico iPP230 PCI compliant, EMV ready credit card readers for taking payments at the counter, in accordance with the standards and specifications of the Statewide Arizona Courts Electronic Payment Processing System Contract No. 2015-00000022. Upon receipt, this hardware becomes the sole and exclusive property of the Chandler Municipal Court.
4. The Contractor will provide the Chandler Municipal Court with a minimum of one full set of test cards annually.
5. The Contractor will facilitate processing of any warranty claims on the EMV ready credit card reader during the manufacturers' warranty period. Following the expiration of the manufacturers' warranty, the Contractor will subsidize the replacement of any defective or damaged EMV credit card reading device according to the following schedule:

| <u>Replacement period</u> | <u>Contractor pays x% of the replacement cost</u> |
|---|---|
| 1 st year following warranty expiration | 25% |
| 2 nd year following warranty expiration | 50% |
| 3 rd year following warranty expiration | 75% |
| 4 th year following warranty expiration and beyond | 100% |

6. Payments are deposited daily into a government fees custodial account and transferred by ACH to the City of Chandler's general account within one business day of receipt. The payment will be accompanied by a reconciliation detailing the payments included and sent to the City of Chandler via email. Any money transfer fees will be absorbed by the Contractor.
7. The Contractor guarantees to Chandler Municipal Court all fees collected, regardless of any chargeback issues. In the case of suspected fraud, the Contractor may, from time to time, reach out to the Chandler Municipal Court for assistance in pursuing resolution to suspected fraudulent chargebacks. In such instances, the Chandler Municipal Court agrees to provide reasonable assistance to the Contractor in these efforts. Such support may include providing documentation, call records, and/or in cases of documented fraud, reinstatement of the underlying citation.
8. Upon notification of an over- or under-payment of any fine amount, the Contractor will refund an overpayment and notify the payer via automated email of their under-payment and the remaining amount due.
9. If there are designated payments which are ineligible for online payment, the Court will be able to disable those records from being paid through the Contractor via the City of Chandler's Court's CMS software.

10. There is no cost to the Chandler Municipal Court for the implementation and operation of the Program. The City of Chandler will make resources available to assist the Contractor in the timely launch of the payment processing program. The expected "go live" date for the services contemplated in this Agreement is 60 days from the execution of this Agreement.

11. The Program may be implemented in three phases as follows:

Phase 1 – Express Solution - When a payment is authorized, the Contractor will provide email notification to the Court and will update the Court's Dashboard with the payment details. The Court employees will accept or reject the payment in the Dashboard and, if accepted, update the case management system with payment information.

The payer will be simultaneously advised via automated email that the transaction has been completed and will receive further notification, when the Court processes the payment in the Dashboard.

Phase 2 - One-way Integration - The Court via its case management software, will update The Contractor's payment program via bulk file upload, with data on all open and payable citations and pay orders from the Court's server. Upon upload of the data, the information may be accessed and payment made by the citation-holder. Data will be searched by case number and the first and last name, or similar identifying characteristic of the citation-holder. When a payment is authorized, The Contractor will provide email notification to the Court and will update the Court's Dashboard with the payment details. The Court employees will accept or reject the payment in the Dashboard and, if accepted, update the case management system with payment information.

The payer will be simultaneously advised via automated email that the transaction has been completed and will receive further notification, when the Court processes the payment in the Dashboard.

Phase 3 - Premium Solution - The Court via its case management software, will update The Contractor's payment program via bulk file upload, with data on all open and payable citations and pay orders from the Court's server. Upon upload of the data, the information may be accessed and payment made by the citation-holder. Data will be searched by case number and the first and last name, or similar identifying characteristic of the citation-holder. At specified intervals to be determined by the Court, payment information will be transferred via bulk file to enable the Court to automatically update the Court's case management system with payment transaction data. When a payment is authorized, the Contractor will provide notification to the Court by automated email.

The payer will be simultaneously advised via automated email that the transaction has been completed and will receive further notification when the Court processes the payment.

13. The Contractor shall provide a toll-free telephonic customer service function to ensure that members of the public utilizing the Program have a satisfactory experience that does not require the technological assistance of Court personnel.

14. The Contractor will provide bilingual call center services and outbound calling services to the Chandler Municipal Court for notification of upcoming and past due payments prior to the Court engaging collection agency services. The Contractor will also provide notification of upcoming and past due payments via SMS and e-mail. Telephone numbers for outbound calls and SMS and email addresses will be provided by the Court.

15. In order to ensure high utilization of the Program and thereby further streamline payment processing, the website address shall be printed on all invoices and a payment link to the Contractor's payment system will be established on the Court's website. Links from other government websites will also be explored. Additionally, the Court administrative staff

should routinely advise telephone callers of the Court's website(s) which should create greater utilization and reduce telephone inquiries to the Court. The expected processing volume in the Program is estimated at 2,500 citation filings per month.

16. The disclaimer language to appear on the website is contained in Exhibit C, attached hereto.
17. Chandler Municipal Court understands that nCourt LLC will provide customer support and billing associated technology services. Chandler Municipal Court hereby authorizes Vantiv, LLC to fund a bank account designated by nCourt LLC for your benefit and to make direct deposit of Visa, MasterCard, and Discover funds into this account. Vantiv, LLC will debit an account owned and designated by nCourt LLC: (1) for the discount fees, and other charges incurred in connection with Chandler Municipal Court card processing; (2) for all chargebacks and adjustments; (3) for arbitration fees, fines, penalties, etc. charged by the associations incurred as a result of Chandler Municipal Court card processing; and (4) for any other amounts described in the Sub-Merchant Agreement Terms and Conditions. Chandler Municipal Court has read, understands and agrees to be bound by the terms and conditions of the Merchant Service Agreement attached hereto, which is hereby incorporated by reference and may be modified or amended from time to time.

**EXHIBIT B
FEE SCHEDULE**

| Electronic Payment Processing | |
|---|----------------------|
| Description | Fee |
| On-line payment processing for citations, fees and fines, bonds, probation and restitution, including chargeback protection | 5% of payment amount |
| Payment processing for payments made at the Court for citations, fees & fines, bonds, probation and restitution, including chargeback protection | 5% of payment amount |
| Customer Care Call Center | |
| Description | Fee |
| Bilingual call center services for payment processing for citations, fees and fines, bonds, probation and restitution, including chargeback protection | 5% of payment amount |
| Outbound calling services to aid in the notification of upcoming and past due payments prior to the Court engaging collection agency services Citizen phone numbers provided by the Court; | 5% of payment amount |

EXHIBIT C DISCLAIMER

To continue to pay your fee, fine, citation or other payment, you must accept the following **TERMS OF USE**. Please read and fully understand the following terms and press the "ACCEPT TERMS" button to acknowledge that you have read and accept these terms. Acceptance of these terms is required to continue to payment. If you do not accept these terms, press "DECLINE TERMS" button to return to the Citation Search screen.

The systems in place for automated processing of information from this court have been tested thoroughly and are subject to multiple levels of backup, confirmation and security. By using this automated payment system, USER acknowledges and understands that errors may occur just as errors can occur with human processing of information. By using this service you agree that this is voluntary and that you (the "USER") understand that the convenience (or service) fee added to the payment(s) being made are charged by the Provider to pay merchant processing fees, web hosting fees, administration and other costs and expenses associated with providing this service. No part of the convenience (or service) fee benefits the court, the judge, any specific civil service individual or any jurisdiction in which the charges or fees were levied, incurred or are being paid.

Other than in connection with processing the payment being made, to the fullest extent possible, identifying private information will not be distributed in any way. No data records or other information will be used, released or sold to any third party. No information will be released to any other party unless such party requires the information for purposes of processing or providing another service essential to completing the transaction related to the payment(s) being made.

nCourt, LLC (the "Company") agrees to use all reasonable efforts to provide accurate processing of information provided from court files and to diligently distribute information provided by the USER to the court. nCourt, LLC cannot and does not guarantee the accuracy or timeliness of any provided information provided and expressly disclaim any warranty, including merchantability and fitness for a particular use under the Uniform Commercial Code of Georgia beyond the extent of the convenience (or service) fees paid by the user of the service.

nCourt, LLC has in place a comprehensive security plan and internal control plan which is designed to ensure the anonymity of program user information. Further, access to such information is controlled and restricted to authorized personnel only. The payment submission process uses Secure Sockets Layer (SSL) encryption to virtually eliminate the possibility of unauthorized access to your private information while it is being transferred across the internet. Your personal financial data is NOT stored on computers administered by the Company.

By submitting this information electronically, you agree to release the court, judge, civil service individuals or any jurisdiction in which the charges or fees were levied, and nCourt, LLC, its principals, officers, directors, employees, agents affiliated companies, successors and assignees (collectively the 'Providers') from any direct, indirect, punitive, incidental, special or consequential damages arising out of or in any way connected to the use of the Program or with the delay or inability to use it, or for any information, software, products and services obtained through this program, or otherwise arising out of the use of this program, the internet generally, or on any other basis (whether based on contract, tort, strict liability or otherwise.) The Providers will not be responsible for any security breaches or non-compliance with Federal or State law or terms of this agreement which results in any act or omission of the USER or a third party unrelated to the negligence of the Provider.

The operation of this online payment program is based in Kennesaw, Georgia and any action of any nature against the company must be brought in Cobb County, Georgia. You agree not to challenge the use of any electronic payment and additionally agree that any action brought by the Provider(s) against you to enforce any electronic payment for which any benefit has been provided to you in any way shall entitle the Provider(s) to per se probable cause for criminal action for theft of services or for civil recovery of all fees paid, process fees, costs, attorney's fees, plus any incidental or associated damages proven by the Provider(s). Any such civil actions shall be brought in the courts of Cobb County, Georgia, without regard to choice of law, and all parties consent to jurisdiction and venue therein.

Nothing herein is to be construed as legal counsel or advice. Users should consult with their own legal counsel with respect to the implications of making the payment through this system.

Any purchases made by a USER from nCourt, LLC via the nCourt web services sites is NON-REFUNDABLE, in whole or in part, once the payment has been submitted, confirmed and accepted by the court. If the submission is rejected by the court, refunds will be processed via credit card, ACH or paper check. Any processing fees associated with the transaction are NON-REFUNDABLE.

To continue to pay your fee, fine, citation or other payment, you must accept the following **TERMS OF USE**. Please read and fully understand the following terms and press the "ACCEPT TERMS" button to acknowledge that you have read and accept these terms. Acceptance of these terms is required to continue to payment. If you do not accept these terms, press "DECLINE TERMS" button to return to the Citation Search screen.

Please indicate your consent to these terms by pressing the 'Accept Terms' button.

EXHIBIT D
STATEWIDE ARIZONA COURTS ELECTRONIC PAYMENT PROCESSING SYSTEM
CONTRACT NO. 2015-0000022

Contract No. 2015-0000022

Statewide Arizona Courts Electronic Payment Processing System

This Agreement is made and entered into by and between the Arizona Supreme Court, Administrative Office of the Courts ("AOC"), and nCourt, LLC, 955A Cobb Place Boulevard, Kennesaw, GA 30144 ("CONTRACTOR").

The parties agree as follows:

ARTICLE I. STATEMENT OF WORK

1.1 PURPOSE. The intent of this Agreement is to provide convenient, PCI-compliant, point-of-service and web-based payment processing solutions for Arizona courts' online service applications, including, but not limited to, electronic filing of case documents, online access to case documents, payment of traffic citations, and payment of professional licensing fees.

1.2 APPLICABLE DOCUMENTS. The following documents are incorporated by reference and made a part of this Agreement:

- A. AOC's Request for Proposals No.14-01
- B. Contractor's Response for RFP #14-01, dated November 3, 2014 ("Response")

In the event of a conflict between these documents, they shall be interpreted in the following order of precedence:

- A. This Agreement including all Service Schedules attached hereto
- B. Contractor's Response
- C. AOC's Request for Proposals No. 14-01

1.3 SCOPE OF SERVICES. Contractor shall fully provide, complete and deliver on time, in all material respects, all tasks, deliverables, goods, services and other work according to its Response, as modified, added or eliminated by the specific terms of this Agreement. The provisions in this Agreement including any attached Service Schedules which modify, supplement, or conflict with the terms of Contractor's Response supersede the Response.

1.4 SERVICE SCHEDULES. Service Schedules attached to and made a part of this Agreement contain details relating to terms and costs of services to be delivered. These Schedules may be modified or supplemented from time to time by written amendments to this Agreement.

1.5 PROJECT PLAN/SCHEDULE. Within 45 days of the signing of this Agreement, Contractor will deliver to AOC for AOC's approval a final project plan and schedule showing all milestones and deliverables. The project plan and schedule shall provide for implementation of all services as described in this Agreement, and as mutually agreed between the parties and AOC's e-filing contractor, Granicus. As required by the project schedule, the AOC and Contractor shall schedule mutually convenient times for meetings, which may or may not include other court staff, and

Granicus representatives concerning the services provided in this Agreement. All partners shall cooperate to meet this timeline.

1.6 ADDITIONAL SERVICES. AOC may request that Contractor provide training, support, and/or other services in addition to those services performed by Contractor as provided herein. If the service involves a change to the electronic payment processing solution or other contracted deliverable, the parties shall follow a mutually-agreed upon change control process to be developed when necessary. For all other services, including services required to implement new versions of Contractor's product in Arizona, the AOC will provide a description of the work to Contractor and Contractor will provide a project schedule and design document covering the requested services prior to initiating development changes. Implementation, deliverables, and performance standards and pricing shall be as agreed by the parties and stated in writing.

1.7 SERVICES FOR INDIVIDUAL COURTS. As stated in Article 1.1, the goal of this project is to provide statewide electronic payment processing solutions for Arizona courts. During the term of this Agreement, Contractor shall not offer the same or substantially similar services to individual Arizona courts except as provided herein or with the written approval of the AOC. If authorized by the AOC, any Arizona court or any political subdivision on behalf of a court may purchase services described in this Agreement and Contractor agrees to provide such services as contracted herein and as otherwise mutually agreed by the parties and approved by the AOC. AOC agrees that call center services are not governed by this provision. Contractor understands and acknowledges that its services with individual courts will not be integrated with any system supported by AOC.

1.8 PRIVATE SWITCHED DATA NETWORK. Unless otherwise directed by AOC, Contractor agrees to process payment transactions through a private switched data network to be provided by AOC.

1.9 PERFORMANCE STANDARDS. Contractor's electronic payment processing solution shall perform as specified in the Response and as otherwise provided in this Agreement. Electronic payment processing service shall be available and accessible to AOC's online service applications 24x7x365 with the exception of pre-scheduled maintenance outages. Contractor shall provide the AOC its maintenance outage schedule for approval. It is understood that items that fall under Force Majeure provision of the Agreement are out of the control of Contractor and therefore Contractor shall not be responsible for delays or failures in performance resulting from such acts. Should an item from the Force Majeure provision occur and there is an unscheduled outage, Contractor shall provide AOC immediate notification and ongoing status updates of an unscheduled outage until the outage is resolved. In the event an outage is caused by a specific Contractor event and not as a result of any event that could be defined by the Force Majeure provision, for every day over the four hours of continuous downtime, the following year's maintenance amount shall be pro-rated at the rate of \$1,000.00 a day. If AOC permission or approval is needed for any reason related to this agreement, the AOC shall not unreasonably withhold such permission or approval and shall notify Contractor of the AOC's position within 15 days of receipt of written notice by Contractor.

ARTICLE II. COMPENSATION

2.1 COMPENSATION. All costs are inclusive of travel and other incidental expenses. AOC agrees to pay Contractor the amounts specified in Service Schedule 2.0.

2.2 BILLING AND PAYMENT PROCEDURE. In accordance with the payment frequency schedule agreed between the parties [daily, weekly or monthly], Contractor will provide the AOC with a detailed payment reconciliation report supporting all payments collected by Contractor on behalf of the AOC and an accounting showing the basis for Contractor transaction fees earned during the period. Not later than ten (10) business days after the detailed reconciliation report has been received, the AOC shall notify the Contractor of any disputed amounts shown on the report. Once the report has been approved, Contractor will deduct its transaction fees and remit the balance due via ACH wire transfer to an account designated by the AOC within two (2) business days.

ARTICLE III. TERM OF AGREEMENT AND TERMINATION

3.1 EFFECTIVE DATE OF AGREEMENT. This Agreement shall become effective upon signing and shall continue in effect for an initial period of three (3) years, unless terminated earlier as set forth herein.

3.2 OPTION TO EXTEND.

A. This Agreement does not bind nor purport to bind the AOC for any contractual commitment in excess of the original contract period. The AOC shall have the right, at its sole option, to renew the Agreement one or more times for up to an additional seven years, or a portion thereof, by unilateral amendment. The AOC shall notify Contractor in writing of its intention to extend the Agreement to provide these services at least ninety (90) days prior to expiration.

B. If the AOC exercises its right to renew the Agreement, all terms, conditions, and provisions of the original Agreement shall remain the same and apply during the renewal period, except that Contractor reserves the right to propose an increase or decrease in the pricing set forth in Service Schedule 2, based on the increase or decrease in Contractor's costs. Contractor further agrees any proposed increase will not exceed the percentage increase charged to Contractor's general customer base. Contractor shall notify AOC of any proposed change in pricing within fourteen (14) days of receipt of the notice provided by AOC under 3.2(A) above.

3.3 SURVIVAL OF CERTAIN PROVISIONS. Any provisions that are by their nature or expressly intended to survive the expiration or termination of this Agreement shall not require specific extension of their terms and shall remain in effect after termination or expiration of this Agreement.

3.4 PRE-TERMINATION NOTICE OPTION. AOC may issue a written notice of concern based on Contractor's failure to carry out any material obligation, term, or condition of the Agreement. Upon receipt of the written notice of deficiency, Contractor shall have ten (10) days to provide a satisfactory response. During the ten day period, the parties will have an opportunity to address the deficiency. If the response is unsatisfactory, AOC will so indicate and Contractor and AOC

will continue discussions toward resolving the deficiency. This process will continue for an additional ten (10) day period until the concern is adequately addressed. Failure on the part of Contractor to satisfactorily resolve all issues by the end of the sixty (60) day period may result in AOC resorting to any single or combination of the following remedies:

- (A) Cancel the Agreement and, receive from Contractor, if cancellation is prior to acceptance, a refund of the software license fee and a pro-rated refund of any annual maintenance fee paid;
- (B) Reserve all rights or claims to damage for breach of any covenants of the Agreement;
- (C) Perform with any needed cooperation by Contractor any test or analysis on materials for compliance with the specifications of the Agreement. If the results of any test or analysis confirm a material noncompliance with the specifications, any reasonable expense of testing shall be borne by Contractor.

3.5 TERMINATION.

- A. Both parties reserve the right to terminate the whole or any part of this Agreement due to failure by the other party to carry out any material obligation, term or condition of the Agreement. AOC will issue written notice of deficiency to Contractor regarding any of the following:
 - (1) The Contractor provides material that does not meet the specifications of the Agreement;
 - (2) The Contractor fails to adequately perform the services set forth in the specifications of the AGREEMENT;
 - (3) The Contractor fails to complete the work required or to furnish the materials required within the time stipulated in the Agreement; or
 - (4) The Contractor fails to acquire and maintain all required insurance policies, bonds, licenses, and permits.
- B. In the case of Contractor's default, AOC reserves the right to purchase materials, or to complete the required work in accordance with the AOC Judicial Branch Procurement Rules. AOC may recover any reasonable actual excess costs incurred by AOC in procuring equipment or services that are the subject matter of, or directly related to, the cause of action, from Contractor by:
 - (1) Deduction from an unpaid balance,
 - (2) Collection against any bid or performance bond, or
 - (3) Any other remedies as provided by law.
- C. Gratuities. AOC may, by written notice to the Contractor, also terminate this Agreement if it is found that gratuities in the form of entertainment, gifts, payment, loan, subscription, advance, deposit of money, services, anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received or otherwise were offered or given by the Contractor or any agent or representative of the

Contractor, to any officer or employee of the AOC for the purpose of influencing the outcome of the procurement or securing a contract or an amendment to the contract, or favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performance of such contract. If the Agreement is terminated under this section, the AOC shall be entitled, in addition to any other rights and remedies, to recover or withhold from Contractor the amount of the gratuity. Paying the expense of normal business meals which are generally made available to all eligible customers shall not be prohibited by this paragraph. The AOC, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the gratuity offered by the Contractor.

- D. Conflicts of Interest. AOC may cancel this Agreement without penalty or further obligation pursuant to A.R.S. § 38-511, if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement on behalf of the AOC is or becomes at any time, while this Agreement or any extension of this Agreement is in effect, an employee of or a consultant to any other party to this Agreement with respect to the subject matter of this Agreement. Cancellation shall be effective when written notice from the AOC is received by Contractor, unless the notice specifies a later time.
- E. Termination for Cessation of Business or Insolvency. AOC may terminate this Agreement effective immediately by giving written notice to Contractor, if Contractor or if Contractor ceases to function as a going concern or operate in the ordinary course or becomes insolvent, admits a general inability to pay its debts as they come due, or makes an assignment for the benefit of creditors, or a petition under any bankruptcy act is filed by Contractor, or such a petition is filed by any third party, or an application for a receiver of the Contractor is made by anyone and such petition or application is not dismissed within sixty (60) days.

3.6 TRANSITION SERVICES In the event the Term of this Agreement ends, or in the event the Agreement is terminated with cause, Contractor shall assist AOC in the transition of services to other Contractors or the AOC. Contractor will administer such services for no more than six (6) months after notification. Contractor shall maintain all contracted services and shall continue normal payment remittance schedules during the transition period. AOC will provide Contractor with notice of the need for transition services not less than two (2) months prior to the end of the contract term. Contractor's payment processing services shall be provided at the existing contract rates. For no additional charge, Contractor will provide a mutually-agreed notice to court customers of the impending transition and continuing access by AOC to any electronic files and other records as may be necessary to assure the smoothest possible transition and continuity of services. Contractor shall also forward to AOC or its designee all customer communications and payments related to disputed transactions for a period of forty-five (45) days after the end of the transition period.

ARTICLE IV. CONFIDENTIALITY

4.1 CONFIDENTIAL RECORDS. Contractor shall not disclose, publish or disseminate court case or any other information made available by the courts or individuals to anyone other than the AOC, the courts, the provider's employees, subcontractors, and other agencies as required to deliver the services described herein without prior written approval from the AOC. Contractor shall develop privacy policies and privacy statements for its operations and Web site applications that protect personal privacy to the fullest extent possible and assure that no information contained in its records or obtained from the courts or from others in carrying out its functions under this Agreement shall be used or disclosed by it, its agents, officers, employees or subcontractors, except as is necessary in the performance of their duties. Persons requesting court information shall be referred to the AOC or the local court. Any unauthorized disclosure or use of confidential information may be contrary to Arizona law and shall constitute grounds for termination of this Agreement.

4.2 PUBLIC INFORMATION. The parties acknowledge that this Agreement and supporting documents, the resulting financial records of transactions and the information contained therein are public records subject to the requirements of Supreme Court Rule 123. In response to a public records request, the AOC may disclose any or all of these documents except where the AOC has determined they contain proprietary or other confidential information that should not be disclosed as permitted by the rule.

ARTICLE V. CLAIMS AND ACTIONS

5.1 PATENT AND COPYRIGHT INDEMNIFICATION. Contractor shall indemnify and hold harmless the Arizona Supreme Court, the AOC, and the State of Arizona from and against any claims, including reasonable legal fees and expenses, based upon infringement of any United States copyright by the software provided by Contractor. AOC agrees to notify Contractor of any such claim promptly in writing and to allow Contractor to control the proceedings. AOC agrees to cooperate fully with Contractor during such proceedings. Contractor shall defend and settle at its sole expense all proceedings arising out of the foregoing. In the event of such infringement, Contractor may replace, in whole or in part, the software with a substantially compatible and functionally equivalent computer program or modify the software to avoid the infringement. If neither of the foregoing alternatives is available on terms that are reasonable in Contractor's judgment, the AOC shall return the item upon Contractor's written request and Contractor shall grant the AOC a credit for returned items in the full amount of the purchase price. Contractor shall have no obligation with respect to any such claim based upon the AOC's modification of the software or its combination, operation or use other than as contemplated by this Agreement.

5.2 INDEMNIFICATION. To the extent allowed by law, Contractor shall defend, indemnify, and hold harmless the AOC, the State of Arizona, and their departments, agencies, boards, commissions, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the

negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this Agreement, the Contractor agrees to waive all rights of subrogation against the AOC, the State of Arizona, and their departments, agencies, boards, commissions, officers, officials, agents and employees for losses arising from the work performed by the Contractor for the AOC.

5.3 INSURANCE REQUIREMENTS:

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The *insurance requirements* herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The AOC in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Agreement by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

1. MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage with limits of liability not less than those stated below.

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, personal and advertising injury and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Damage to Rented Premises \$ 50,000
- Each Occurrence \$1,000,000

a. The policy shall be endorsed (Blanket Endorsements are not acceptable) to include the following additional insured language: *“The Arizona Supreme Court, the State of Arizona, and their departments, agencies, boards, commissions, officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.”* Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

- b. Policy shall contain a waiver of subrogation endorsement (blanket endorsements are not acceptable) in favor of the "Arizona Supreme Court, the State of Arizona, and their departments, agencies, boards, commissions, officers, officials, agents, and employees" for losses arising from work performed by or on behalf of the Contractor.

2. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000
 - a. The policy shall be endorsed (blanket endorsements are not acceptable) to include the following additional insured language: "The Arizona Supreme Court, the State of Arizona, and their departments, agencies, boards, commissions, officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor." Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.
 - b. Policy shall contain a waiver of subrogation endorsement (blanket endorsements are not acceptable) in favor of the "Arizona Supreme Court, the State of Arizona, and their departments, agencies, boards, commissions, officers, officials, agents, and employees" for losses arising from work performed by or on behalf of the Contractor.
 - c. Policy shall contain a severability of interest provision.

3. Worker's Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability

| | |
|-------------------------|-------------|
| Each Accident | \$1,000,000 |
| Disease - Each Employee | \$1,000,000 |
| Disease - Policy Limit | \$1,000,000 |

 - a. Policy shall contain a waiver of subrogation endorsement (blanket endorsements are not acceptable) in favor of the "Arizona Supreme Court, the State of Arizona, and their departments, agencies, boards, commissions, officers, officials, agents, and employees" for losses arising from work performed by or on behalf of the Contractor.
 - b. This requirement shall not apply to: Separately, EACH Contractor or subcontractor exempt under A.R.S. § 23-901, AND when such Contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

4. Technology/Network Errors and Omissions Insurance

| | |
|------------|-------------|
| Each Claim | \$1,000,000 |
|------------|-------------|

Annual Aggregate

\$2,000,000

Coverage to include:

- Hostile action or a threat of hostile action with the intent to affect, alter, copy, corrupt, destroy, disrupt, damage, or provide unauthorized access/unauthorized use of a computer system including exposing or publicizing confidential electronic data or causing electronic data to be inaccessible;
- Computer viruses, Trojan horses, worms and any other type of malicious or damaging code;
- Dishonest, fraudulent, malicious, or criminal use of a computer system by a person, whether identified or not, and whether acting alone or in collusion with other persons, to affect, alter, copy corrupt, delete, disrupt, or destroy a computer system or obtain financial benefit for any party or to steal or take electronic data;
- Denial of service for which the insured is responsible that results in the degradation of or loss of access to internet or network activities or normal use of a computer system;
- Loss of service for which the insured is responsible that results in the inability of a third party, who is authorized to do so, to gain access to a computer system and conduct normal internet or network activities;
- Access to a computer system or computer system resources by an unauthorized person or an authorized person in an unauthorized manner;
- Loss or disclosure of confidential information no matter how it occurs;
- Systems analysis;
- Software Design;
- Systems programming;
- Data processing;
- Systems integration;
- Outsourcing including outsourcing development and design;
- Systems design, consulting, development and modification;
- Training services relating to computer software or hardware;
- Management, repair and maintenance of computer products, networks and systems;
- Marketing, selling, servicing, distributing, installing and maintaining computer hardware or software; and
- Data entry, modification, verification, maintenance, storage, retrieval or preparation of data output
 - a. In the event that the professional liability insurance required by this contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.
 - b. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.

5. **Fidelity Insurance (Crime Bond)**

- Policy Limit \$1,000,000
- a. The policy shall be issued with minimum limits of \$100,000.
- b. The policy shall include coverage for all directors, officers, agents and employees of the Contractor.
- c. The policy shall include coverage for third party fidelity.
- d. The policy shall include coverage for theft.
- e. The policy shall contain no requirement for arrest and conviction.
- f. The policy shall cover loss outside the premises of the Named Insured.
- g. The Arizona Supreme Court, Administrative Office of the Courts, shall be endorsed (blanket endorsements are not acceptable) as a Loss Payee as our interest may appear.

2. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed (blanket endorsements are not acceptable) to include, the following provisions:

1. The Contractor's policies shall stipulate that the insurance afforded the Contractor shall be primary insurance and that any insurance carried by the Arizona Supreme Court, Administrative Office of the Courts the State of Arizona, or their officers, officials, agents and employees shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
2. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

3. **NOTICE OF CANCELLATION:** With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to the AOC. Such notice shall be sent directly to the AOC and shall be sent by certified mail, return receipt requested.

4. **ACCEPTABILITY OF INSURERS:** Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. Neither the AOC nor the State of Arizona in any way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

5. **VERIFICATION OF COVERAGE:** Contractor shall furnish the AOC with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements (blanket endorsements are not acceptable) are to be received and approved by the AOC before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to the AOC. The AOC contract number and project description shall be noted on the certificate of insurance. The AOC reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

6. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the AOC separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
7. **APPROVAL:** Any modification or variation from the *insurance requirements* in this Agreement shall be made by the AOC. Such action will not require a formal contract amendment, but may be made by administrative action.

ARTICLE VI. SUBCONTRACTS, ASSIGNMENTS AND STAFFING

6.1 **SUBCONTRACTS.** No subcontract shall be entered into by Contractor with any other party to furnish any of the material or services specified herein without the advance written approval of the AOC. All subcontracts shall comply with Federal and State laws and regulations that are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract, as if the subcontractor were the principal referred to herein. Contractor is responsible for contract performance whether or not subcontractors are used. The AOC shall not unreasonably withhold approval and shall notify Contractor of the AOC's position within 15 days of receipt of written notice by Contractor.

6.2 **ASSIGNMENTS - DELEGATION.** No right or interest in this Agreement shall be assigned by Contractor without prior written permission of the AOC, and no delegation of any duty of Contractor shall be made without prior written permission of the AOC. AOC will not unreasonably withhold approval and shall notify Contractor of its position within 15 days of receipt of written notice. Any attempt to assign any of the rights, duties or obligations of this Agreement, or otherwise assign any item acquired under this Agreement, without such consent is void.

6.3 **STAFFING.** Contractor shall provide qualified and experienced personnel in sufficient number to ensure that all required services are performed to the standards required by this Agreement. Contractor retains the right to determine the manner in which work is distributed, and assign tasks for additional employees as it deems necessary to carry out the work of the Agreement. The list of key personnel engaged in providing direct services to Arizona courts under this Agreement has been provided to AOC, is hereby approved and shall be subject to the continuing approval of AOC, including reassignment by Contractor from ongoing duties under this Agreement. If at any time during the term of this Agreement key personnel are not acceptable to AOC, then Contractor shall, upon receipt of written or verbal notice from AOC, immediately replace such personnel with substitute qualified personnel or take such other action as may be mutually agreed. If at any time during the term of this Agreement, any Contractor personnel ceases performance for any reason, including, but not limited to, resignation or termination, then Contractor shall promptly replace such personnel with substitute qualified personnel approved by the AOC.

6.4 RECRUITING. The parties shall not, without the consent of the other party, entice, encourage, offer special inducements, or otherwise recruit employees of the other party during the period of this Agreement and for a period of two years thereafter. This clause is not intended to restrict any individual's right of employment but rather is intended to preserve the relationship intended under this Agreement and to prevent the parties from actively recruiting the employees of the other party.

ARTICLE VII. GENERAL TERMS

7.1 CERTIFICATION. By execution of this Agreement, Contractor certifies:

- A. The submission of the offer did not involve collusion or other anti-competitive practices.
- B. Contractor shall comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, nondiscrimination, including the Americans with Disabilities Act, and affirmative action. Contractor shall include a clause to this effect in all subcontracts related to this Agreement.
- C. Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Agreement. Signing this Agreement with a false statement shall void the Agreement and may be subject to all legal remedies provided by law.
- D. No individual or agent has been employed or retained to solicit or secure this Agreement for a commission, percentage, brokerage or contingent fee, except a bona fide employee maintained by Contractor to secure business. This paragraph does not apply to payment of fees for assistance in marketing, installation, and support or for any other purpose in performance of this Agreement.

7.2 AVAILABILITY OF FUNDS. Payments for contractual obligations are contingent on funds for that purpose being appropriated, budgeted, and otherwise made available, and the provisions of this Agreement shall be effective only when funds appropriated for the purpose of compensating Contractor actually are available to the AOC for disbursement. The Administrative Director of the AOC shall be the sole judge and authority in determining the availability of funds under this Agreement and shall keep Contractor informed as to the availability of funds. AOC shall not be liable for any purchases or subcontracts entered into by Contractor in anticipation of funding. In the event of the unavailability of funds, AOC may cancel this Agreement, suspend the Agreement, or accept a decrease in price offered by the Contractor.

7.3 APPLICABLE LAW. The laws and regulations of the State of Arizona, the Procurement Code for the Judicial Branch, and the AOC Procurement Bid Protest, Contract Claim, Debarment and Appeals Procedure shall govern the rights of the parties, the performance of this Agreement and any dispute thereunder. Any action or claim relating to this Agreement shall be brought in an Arizona Court in Maricopa County. Any changes in the governing laws, rules and regulations during the term of this Agreement shall apply and do not require an amendment to this Agreement.

7.4 ARIZONA PROCUREMENT CODE FOR THE JUDICIAL BRANCH. The Procurement Code for the Judicial Branch (ACJA § 1-402) is incorporated as a part of this document as if fully set forth herein.

7.5 AMENDMENTS AND WAIVERS. This Agreement shall be modified only by a written contract amendment within the scope of this Agreement signed by persons duly authorized by court policies and procedures to enter into contracts on behalf of the AOC. Changes to the Agreement, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of this Agreement and of applicable law. Such changes, including unauthorized written contract amendments shall be void and without effect, and Contractor shall not be entitled to any claim under this Agreement based on those changes. To the extent that any amendments to this Agreement are in conflict with the basic terms and conditions of the Agreement, the amendments shall control the interpretation of the Agreement.

7.6 PROVISIONS REQUIRED BY LAW. Each and every provision of law and any clause required by law to be in the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Agreement shall forthwith be physically amended to make such insertion or correction.

7.7 SEVERABILITY. If any provision of the Agreement is held invalid or unenforceable, the remaining provisions shall continue valid and enforceable to the full extent permitted by law.

7.8 RELATIONSHIP OF THE PARTIES. It is clearly understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever. Contractor is an independent contractor in the performance of work and the provision of services under this Agreement.

7.9 COMPLIANCE WITH LAW. All services rendered hereunder shall be provided in accordance with all applicable federal, state and city ordinances, resolutions, statutes, rules and regulations. Contractor shall, at its expense, obtain and maintain all licenses, permits, and authority necessary to do business, render services, and perform work under this Agreement, and shall comply with all laws regarding unemployment insurance, disability insurance, and worker's compensation. To the extent that there is a change in applicable laws from those existing at the time of execution of this Agreement that impacts or effects the services defined herein, the parties agree to renegotiate and modify all pertinent sections affected by such change in law.

7.10 INTERPRETATION. This Agreement is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the

accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object. Whenever a term defined by the Procurement Code for the Judicial Branch (ACJA § 1-402) is used in this Agreement, the definition contained in the Code shall control with the provisions of the Code governing in the case of conflicting terms.

7.11 RIGHTS AND REMEDIES. The rights and remedies of the State of Arizona and the AOC under this Contract are not exclusive. No provision in this document or in Contractor's Response shall be construed, expressly or by implication as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim of default or breach of contract. The failure of either party to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in the Agreement, or by law, or the acceptance of materials or services, or the payment for materials or services, shall not release either party from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Agreement.

7.12 CONTRACT CLAIMS.

- A. **Informal Procedure.** Prior to commencing a formal contract claim, Contractor shall make reasonable efforts to resolve the claim through discussions with the AOC project manager or contract administrator.
- B. **Formal Procedure.** If the contract administrator or project manager's decision is not acceptable to Contractor, the dispute shall be resolved in accordance with the procedures set forth in Supreme Court Administrative Policy 7.04, AOC Procurement Bid Protest, Contract Claim, Debarment and Appeals Procedure.
- C. **Continued Performance.** The parties agree that the existence of a dispute notwithstanding, they will continue without delay to carry out all their responsibilities under this Agreement that are not affected by the dispute.
- D. After exhausting applicable administrative reviews, the parties agree to use arbitration where the sole relief sought is monetary damages of Fifty Thousand Dollars (\$50,000) or less, exclusive of interest and costs, pursuant to A.R.S. § 12-1518.

7.13 WARRANTIES. Contractor warrants that all material and services delivered under this Agreement shall conform to the specifications of this Agreement. Mere receipt of shipment of the material or services specified, and any inspection incidental thereto by AOC, shall not alter or affect Contractor's obligations or the rights of the AOC under the foregoing warranties. Additional warranty requirements may be set forth in this document.

7.14 THIRD PARTY ANTI-TRUST VIOLATIONS. Contractor hereby assigns to AOC any and all claims for overcharges resulting from anti-trust violations to the extent that those violations concern materials or services supplied by third parties to Contractor.

7.15 FORCE MAJEURE.

- A. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Agreement if and to the extent that such party's performance is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lockouts, injunctions-intervention-acts, or failures or refusal to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with this agreement.
- B. Force majeure shall not include the following occurrences:
- (1) Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market.
 - (2) Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.
 - (3) Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.
- C. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Agreement.
- D. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

7.16 RIGHT TO ASSURANCE. Whenever one party to this Agreement in good faith has reason to question the other party's intent to perform, the party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written

assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.

7.17 RECORDS RETENTION AND AUDIT. Pursuant to provisions of Title 35, Chapter 1, Article 6 Arizona Revised Statutes §§35-214 and 35-215, Contractor shall retain, and shall contractually require each subcontractor to retain, all books, accounts, reports, files and other records relating to the acquisition and performance of the Agreement for a period of five (5) years after the completion of the Agreement. All such documents shall be subject to inspection and audit at reasonable times. This paragraph does not apply to confidential information or trade secrets, such as product costing data, research and development data, and the like.

7.18 ADVERTISING. Contractor shall not advertise or publish information concerning this Agreement without prior written consent of the AOC.

7.19 FACILITIES INSPECTION AND MATERIALS TESTING. Contractor agrees to permit access to its facilities, subcontractor facilities and Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Agreement. AOC shall also have the right to test, at its own cost, the materials to be supplied under this Agreement. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If AOC determines noncompliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by AOC for testing and inspection. If materials are returned, all costs are the responsibility of the Contractor.

7.20 FINANCIAL AUDIT. At any time during the term of this Agreement, Contractor's financial operations related to this Agreement may be audited by the AOC, by auditors designated by the AOC, or by any other appropriate agency of the state or federal government.

7.21 LIENS. Contractor warrants that the materials supplied under this Agreement are free of liens and shall remain free of liens.

7.22 LICENSES AND PERMITS. Contractor shall maintain in current status all federal, state, and local licenses and permits required for the operation of its business as applicable to this Agreement.

7.23 TAXES.

- A. **Payment of Taxes.** Contractor shall be responsible for paying all applicable taxes. The AOC is exempt from Federal Excise Tax, including the Federal Transportation Tax.
- B. **State and Local Transaction Privilege Taxes.** The AOC is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes. Sales tax, as required, shall be indicated as a separate item on all invoices.
- C. **Tax Indemnification.** Contractor and all subcontractors shall pay all federal, state and local taxes applicable to its operation and any persons employed by Contractor. Contractor shall,

and shall require all subcontractors to, hold the AOC harmless from any responsibility for taxes, damages, and interest, if applicable, contributions required under federal and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security, and worker's compensation.

- D. IRS W9 Form. In order to receive payment, Contractor shall have a current I.R.S. W9 Form on file with the AOC, unless not required by law. Sales taxes, as required shall be indicated as a separate item on all invoices.

7.24 OTHER CONTRACTS. The AOC may perform additional work related to this Agreement or award other contracts for such work, including on-line citation payment processing. Contractor shall reasonably cooperate with such other contractors or court employees in the scheduling of and coordination of its own work with such additional work.

7.25 PRICE REDUCTION. A price reduction adjustment may be offered at any time during the term of this Agreement and shall become effective upon notice.

7.26 INSTALLATION. Any order, acceptance or other document evidencing a purchase under this Agreement for equipment or software shall describe the responsibilities of the parties regarding installation of the goods ordered, including the establishment of the date of installation.

7.27 FAILURE TO WAIVE COMPLIANCE. Acceptance by administration of performance not in strict compliance with the terms hereof shall not be deemed to waive the requirement of strict compliance for all future performance obligations.

7.28 CRIMINAL HISTORY CHECK. AOC may require Contractor to provide identifying information for any individuals working in judicial facilities or having access to judicial information for the purposes of conducting a criminal history records check for security purposes. Contractor agrees to cooperate with such requests and understands that the AOC may terminate this Agreement if the results of the criminal history records check would disqualify Contractor or an individual and there is no acceptable alternative.

7.29 COMPLIANCE WITH THE ARIZONA LEGAL WORKERS ACT. A.R.S. §41-4401.

- A. Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants in compliance with A.R.S. §23-214(A). (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program"). If this compliance requirement disqualifies any of Contractor's key personnel or individuals working at the direction of Contractor and no acceptable alternative is provided the AOC may terminate this Agreement.
- B. A breach of a warranty regarding compliance under subparagraph A shall be deemed a material breach of the contract that is subject to penalties up to and including termination of the Agreement.

- C. The AOC retains the legal right to audit and inspect the papers of any of Contractor's employees or subcontractor's employee who works on the contract to ensure that Contractor's personnel and any person working at the direction of Contractor is complying with the warranty under subparagraph A.

7.30 SUSPENSION OR DEBARMENT. The AOC may, by written notice to Contractor, immediately terminate this Agreement if the AOC determines that Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the Contractor is not currently suspended or debarred. If Contractor becomes suspended or debarred, Contractor shall immediately notify the AOC.

7.31 OWNERSHIP OF INTELLECTUAL PROPERTY. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, or trade secrets, XML specifications, schema, extensions, and file names created or conceived solely pursuant to and in the performance of this Agreement (collectively, the "Developed Intellectual Property"), shall be work made for hire and the AOC shall be the owner of such Developed Intellectual Property. The AOC shall own the entire right, title and interest to the Developed Intellectual Property throughout the world, except that AOC grants and agrees to grant to CONTRACTOR a perpetual, irrevocable, fully paid up, transferable, royalty free, worldwide, sublicensable, non-exclusive right and license: (i) to modify and create derivative works of the Developed Intellectual Property; (ii) to make, use, copy, import, distribute (directly or indirectly), license, sell, offer to sell, practice, rent, or lease or otherwise dispose of the Developed Intellectual Property (and derivative works thereof created under clause (i) above); and (iii) to sublicense any and all of the rights set forth in clauses (i) and (ii) above to further third parties, including the right to sublicense such rights to further third parties, except that the foregoing license insofar as it relates only to AOC online electronic payment XML specifications, schema, extensions, and file names, whether pre-existing or created by one of the parties under this agreement, is limited to use or disclosure for use in the Arizona Court System only. Software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of this Agreement ("Independent Materials") do not constitute Developed Intellectual Property. Contractor shall notify the AOC within thirty (30) days, of the creation of any Developed Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Developed Intellectual Property vests in the AOC and shall take no affirmative action's that might have the effect of vesting all or part of the Developed Intellectual Property in any entity other than the AOC.

Notwithstanding the foregoing, if the AOC elects, in its sole and absolute discretion, to relinquish its ownership interest in any or all of the Intellectual Property, the AOC shall have the rights to use, modify, reproduce, release, perform, display, sublicense or disclose such Intellectual Property within the Judicial Branch without restriction for any activity in which the AOC is a party.

After termination of this Agreement, AOC retains the right to develop, contract for, or acquire and maintain software to automate online electronic payment processing, including, but not limited to use of XML specifications, schema, extensions, and file names created under this Agreement.

Title to all reports, AOC information, or AOC data, prepared in conjunction with Contractor in performance of this Agreement shall vest with the AOC. Subject to applicable state and federal laws and regulations, AOC shall have full and complete rights to reproduce, duplicate, disclose, and otherwise use all such AOC information.

7.32 DESIGNATED REPRESENTATIVES. To facilitate efficient operations, both parties shall designate primary representatives to act as the first point of contact to resolve inconsistencies, problems or other issues related to this Agreement. The AOC representative shall be authorized to accept or reject work produced by Contractor, authorize payment, and negotiate any service changes or amendments to the Agreement. All contract amendments and Service Schedule changes shall be approved by the AOC Director or designee.

7.33 COMPUTATION OF TIME. Any reference to "days" in this Agreement shall mean calendar days, unless otherwise specified.

7.34 OFFSHORE PERFORMANCE OF WORK PROHIBITED. Due to security and identity protection concerns, direct services under this Agreement shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the Arizona Judicial Branch or its clients and may involve access to secure or sensitive data or personal identifying information or development or modification of software for the Arizona Judicial Branch shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or "overhead" services, redundant back-up services or services that are incidental to the performance of this Agreement. This provision applies to work performed by subcontractors at all tiers.

7.35 NOTICES. All notices required by this Agreement shall be sufficiently given by mailing the same by certified or registered mail, return receipt requested, to the parties at their respective addresses, as follows:

Contractor: nCourt, LLC
955A Cobb Place Blvd
Kennesaw, GA 30144
Attn: Kathleen Miller, CPA, Chief Financial Officer

AOC: Arizona Supreme Court
Administrative Office of the Courts
1501 West Washington, Suite 411
Phoenix, Arizona, 85007-3231
Attn: Marcus Reinkensmeyer, Director, Court Services Division

Any notice given in accordance with this clause shall be deemed to be received by and served upon the other party on the date such letter would in the ordinary course of post have reached such address or on the date such notice is served or left at the relevant address and in the case of

facsimile shall be deemed to have been served on the day following the date of successful transmission.

7.36 DUPLICATE ORIGINALS. The parties may execute this Agreement in two or more counterparts, each of which shall be deemed an original and together which shall constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date written below.

nCOURT, LLC

ARIZONA SUPREME COURT
Administrative Office of the Courts

By: Kathleen M. Miller

By: [Signature]

Date: 2/27/15

Date: 2-26-15

Federal Employer ID: 38-3655279