**MUTUAL NONDISCLOSURE AND CONFIDENTIALITY AGREEMENT**

State Court Administrative Office Vendor

Hall of Justice

925 W. Ottawa Street

Lansing, MI 48915

**1. DEFINITIONS GOVERNING MUTUAL NONDISCLOSURE AND CONFIDENTIALITY AGREEMENT**

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

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

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

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

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

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

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

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

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

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

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

**2. GENERAL PROVISIONS OF AGREEMENT**

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

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

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

**3. TERM OF AGREEMENT**

3.01 This Agreement becomes effective on the Effective Date.

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

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

**4. RELATIONSHIP**

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

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

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

**5. CONFIDENTIALITY OF INFORMATION**

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

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

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

**5.03 Advising employees, agents, and subcontractors.** The Parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential or Proprietary Information confidential before disclosing this Confidential or Proprietary Information. Disclosure to a subcontractor is only permissible where: (a) use of a subcontractor is authorized under this Agreement; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor’s responsibilities; and (c) the party using the subcontractor (SCAO or Vendor) obligates the subcontractor in a written contract to keep the Disclosing Party’s information confidential. Further, immediately upon the Disclosing Party’s request, any employee, agent, or subcontractor of SCAO or Vendor may be required to execute a separate agreement to be bound by the provisions of this Section.

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

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**5.05** **Compelled Production of Confidential or Proprietary Information.** If disclosure of Confidential or Proprietary Information is required by law or court order, the Receiving Party must notify the Disclosing Party. If the Receiving Party is Vendor, notification must be made as specified in Section 22 below. The Disclosing Party will provide a delivery confirmation email upon receipt of such notice. Notification must be accomplished within five (5) business days before disclosure is required, unless the law or a court order requires disclosure before five-days’ notice can be given; in these circumstances, notice must be provided as soon as possible. Each party shall reasonably cooperate with the other party to narrowly tailor disclosure and reasonably cooperate with the party attempting to obtain protective orders or other relief as appropriate.

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

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

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

**5.08** **Return, Destruction and Deletion of Confidential or Proprietary Information.** Within 30 calendar days of the termination of this Agreement, the Parties shall return, destroy, and delete any and all hard copies, electronic copies, and copies in any other form of the Confidential or Proprietary Information provided to them by one another. At the time of the return, destruction and/or deletion, the Parties shall provide written certification thereof to the Disclosing Party directed to the points of contact listed in Section 22 of this Agreement.

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

**6.** **BREACH OF CONFIDENTIALITY PROVISIONS**

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

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

**7. NO LIABILITY BY SCAO**

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

# **8. EXPORT LAW**

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

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

# **10. TERMINATION**

This Agreement terminates at the end of the bidding process. Each Party has the right to terminate this Agreement before that time without cause. However, the terminating party must provide written notice to the other party of such termination at least five (5) business days before the termination will be effective. Termination notice shall be accomplished in the manner set forth in Section 22 of this Agreement. Further, termination of this Agreement does not alleviate the duties each party owes the other with respect to the guarding from disclosure of the Confidential or Proprietary Information.

# **11. MICHIGAN LAW**

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

# **12. DEBT TO STATE OF MICHIGAN**

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

# **13. DISPUTES**

The Parties shall notify one another in writing of their respective intent to pursue a claim against the other for breach of any term of this Agreement within ten (10) business days of discovery of the alleged breach. Notice must be provided by both electronic mail and by an overnight delivery service that can track and confirm delivery as provided in Section 22 below.

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

# **14. GOOD STANDING**

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

**15.** **CONFLICT OF INTEREST**

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

**16. SUCCESSORS AND ASSIGNMENT**. Vendor may not assign this Agreement to any other party without the prior approval of the SCAO.

# **17. ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the Parties and supersedes any prior written or oral promises and representations. No other understanding, oral or otherwise, regarding the subject matter of this Agreement exists to bind either of the Parties.

# **18. SEVERABILITY**

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

# **19. ACKNOWLEDGMENT**

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

**20. AMENDMENT**

This Agreement may be amended only upon written agreement of the Parties.

**21. EXECUTION AND AUTHORITY TO BIND.** This Agreement may be executed by electronic signature in any number of counterparts, each of which when so executed will be deemed to be an original, and all of which taken together, will constitute the same agreement. Signatures sent electronically, by DocuSign, or by similar means (including scanned images of signatures forwarded by e-mail) will have the same binding effect as original signatures. Each person signing this Agreement represents that he or she is duly authorized to execute this Agreement on behalf of the responsible agency or entity.

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

1. Vendor’s Contact Information.

Vendor’s contact person:

Vendor’s mailing address:

Vendor’s e-mail address:

Vendor’s phone number:

1. The SCAO’s contact person is (**both** must be used):

Kellie Fischer, Juvenile Justice Quality Assurance Manager, Child Welfare Services and Alicia Moon, Supreme Court General Counsel

Mailing address for both: Kellie Fischer and Alicia Moon, State Court

Administrative Office, Michigan Hall of Justice, P.O. Box 30048, Lansing, MI,

48909

Email addresses (both must be used): fischerk@courts.mi.gov and moona@courts.mi.gov

Phone number for Kellie Fischer: (517) 373-9357

Phone number for Alicia Moon: (517) 373-1294

# **Vendor** **STATE COURT ADMINISTRATIVE**

**OFFICE**

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name: Printed Name: Elizabeth Rios

Title: Title: Deputy State Court Administrator

Date: \_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_