



1 The terms of its engagement will require Court's Vendor(s) to perform  
2 collection services under the Program on the terms and conditions set  
3 forth in the Master Agreement between the Judicial Council of California  
4 ("JCC") and Court's Vendor(s).

5 b. The County may engage vendor(s), ("County's Vendor(s)") to perform  
6 collection services under the Program on certain Qualifying Accounts.

7 The terms of its engagement will require County's Vendor(s) to perform  
8 collection services under the Program on the terms and conditions set  
9 forth in the agreement between the County of Fresno and County's  
10 Vendor(s).

11 c. "Participants" means the Court, the County, Court's Vendor(s), and  
12 County's Vendor(s) collectively.

13 3. The County has entered into an agreement with the Franchise Tax Board  
14 ("FTB") to participate in its Court-Ordered Debt Collection program. A copy of that  
15 agreement is attached to this MOU.

16 4. The Parties will not knowingly accept full or partial payments on any  
17 accounts or Qualifying Accounts of the other Party. If such payments are inadvertently  
18 received, the Party who collected the payment(s) will forward such payments to the  
19 other Party upon discovery.

20 5. Each Party will provide the other with reports annually or upon request.  
21 The reports shall indicate the amount of money collected under the Program in the  
22 applicable time period, in the format used by the Court to meet its reporting  
23 requirements to the JCC. The County will provide the Court with reports annually or  
24 upon request. The reporting format will be provided by the Court to the County and any  
25 changes requested to the County with a 60-day lead time for implementation. Each  
26 report will include the following: (a) the gross amount of revenue collected; (b) the  
27 amount the County has deducted as its allowable collection costs under Penal Code  
28 Section 1463.007; and (c) the net amount of revenue to be distributed by the County.

1 The Court will make the applicable deductions and distribute and deposit the remaining  
2 revenue collected under the Program with the County for distribution, according to  
3 California law and regulations and guidelines of the JCC and State Controller's Office  
4 ("SCO"). The County will make the applicable deductions and distribute the remaining  
5 revenue according to California law and the regulations and guidelines of the JCC and  
6 SCO.

7 6. Each Party will provide the other with view-only access to its case  
8 management system on request, and as necessary only for administrative purposes  
9 related to the implementation and continued operation of the Program. Each Party will  
10 bear its own costs for this access. This request will be provided with prior approval from  
11 the JCC Security Committee, and each Party may deduct the costs of this access as  
12 permitted by Penal Code Section 1463.007.

13 7. The Parties will work cooperatively to maximize revenue collections and  
14 the quality of customer service being provided. The Parties will each designate an  
15 employee to act as the contact person for each Party to facilitate the exchange of  
16 information and resolve any day-to-day issues. Additionally, the Parties will conduct  
17 management-level meetings as needed.

18 8. Participants will safeguard as confidential all information shared between  
19 them to carry out the purpose of this MOU. Except as necessary with respect to the  
20 duties of Court's Vendor(s) under its agreement with the Court or County's Vendor(s)  
21 under its agreement with the County, no Participant will disclose any information shared  
22 between the Participants to a third party without the prior written consent of the other  
23 Party (Court or County, not Vendors), with the exception of the FTB, and audits  
24 performed by the JCC, the SCO, or other legally authorized agency.

25 9. The Parties will comply with the guidelines and standards approved from  
26 time to time by the JCC in the operation of the Program. The Parties will develop a  
27 cooperative plan and a manual of operational policies and procedures as necessary to  
28 implement these guidelines and standards. The Parties will cooperate as necessary to

1 complete reports to the JCC on their collections program, on the schedule and in the  
2 form required by the JCC.

3 10. The Parties will monitor and implement any changes or modifications to  
4 state laws and/or regulations affecting the Program and notify the other of such change.

5 11. Each Party will develop their own policy for discharging accounts deemed  
6 uncollectible.

7 12. When necessary the County may request clarification of a Court Minute  
8 Order. All County requests for clarification of Minute Orders will be sent to a staff  
9 member appointed by the Court. The court will make reasonable efforts to provide  
10 clarification to the County within 10 court days.

11 13. The parties will allow the other access to Social Security Numbers (SSN)  
12 related solely to Court ordered fines, fees and penalties in an effort to qualify as much  
13 delinquent debt as possible for both the Court Ordered Debt (COD) and FTB programs.  
14 The Parties will not use SSN obtained in this manner for any other purpose.

### 15 **Allowable Deductions**

16 14. Each Party may deduct from the revenue collected under the Program its  
17 allowable costs as provided in Penal Code Section 1463.007 prior to its distribution.

18 15. If the revenue collected under the Program during any month is  
19 insufficient to allow a Party to deduct all of its costs for that month, and subject to the  
20 regulations and guidelines promulgated by the JCC and the SCO, that Party may  
21 rollover such shortfall to the subsequent month(s) for deduction.

### 22 **Term and Termination**

23 16. The term of this MOU is for three years, beginning on December 14, 2014  
24 ("Effective Date"). Beginning on December 14, 2017, this MOU will automatically renew  
25 for another year on the anniversary of the Effective Date, unless terminated by either  
26 Party as provided below.

27 17. Either Party may terminate this MOU by giving at least 90 calendar days'  
28 written notice to the other Party; provided, however, such termination will not be

1 effective, and this MOU will remain in full force and effect, unless and until the Parties  
2 execute a new memorandum of understanding or other document setting forth their  
3 agreement on the operation of a subsequent collections program as required by Penal  
4 Code Section 1463.010.

### 5 **Dispute Resolution**

6 18. If, after 30 calendar days of negotiations, the Court and the County  
7 cannot resolve a dispute regarding the interpretation or performance of this MOU or  
8 cannot agree on a new collections program, either Party may request a meeting  
9 between the Court Executive Officer and the County Auditor-Controller/Treasurer-Tax  
10 Collector for the purposes of resolving the dispute. The request must be in writing. If  
11 such meeting is requested, the meeting will be held within 10 days of the receipt of  
12 such request. If the meeting fails to occur or fails to resolve the dispute, the dispute will  
13 be submitted for non-binding mediation by a third party mutually agreed upon by the  
14 Court Executive Officer and the County Board of Supervisors. If the mediation fails to  
15 resolve the dispute, and if both Parties agree at that time, both Parties may agree to  
16 binding arbitration by a third party mutually agreed upon by the Court Executive Officer  
17 and the County Board of Supervisors. Until the dispute is resolved, the Parties will  
18 continue to operate the Program as set forth in this MOU and perform and observe their  
19 respective responsibilities and rights hereunder.

### 20 **Compliance with Audits and Records Retention Requirements**

21 19. The Parties will receive, reply to, and/or comply with any audit by an  
22 appropriate state audit agency that directly relates to this MOU or to funds to be  
23 handled or disbursed hereunder. The Parties will each maintain an accounting system  
24 and supporting fiscal records to comply with the state audit requirements related to this  
25 MOU.

26 20. The Parties will maintain and preserve all records and documentation  
27 related to this MOU, including records related to billings and other financial records, in  
28 an accessible location and condition for a period of not less than ten years after an

1 account has been completely paid or until after an audit involving an account has been  
2 resolved, whichever is later. Each Party will adequately protect all records against fire  
3 or other damage.

#### 4 **General Provisions**

5 21. **Entire Agreement.** This MOU constitutes the entire agreement between  
6 the Parties with respect to the subject matter hereof and supersedes all previous  
7 modifications, agreements, proposals, negotiations, representations, and commitments,  
8 both oral and written, between the Parties to this MOU.

9 22. **Modification.** Any of the terms of conditions of this MOU may be  
10 modified from time to time, prior to termination of this MOU, by written mutual consent  
11 of the Parties. Any written change to this Agreement shall be in the form of a written  
12 Amendment which shall be attached to the original Agreement to maintain continuity.  
13 No addition to or alteration of the terms of this MOU will be valid unless made in the  
14 form of a written amendment. Each Party will provide the other with at least 30 calendar  
15 days prior written notice of any vendor change along with the new vendor's contact  
16 information.

17 23. **Further Assurances.** Each Party agrees to cooperate with the other, and  
18 to execute and deliver, or cause to be executed and delivered, all such other  
19 instruments and documents, and to take all such other actions as may be reasonably  
20 requested of it from time to time, in order to effectuate the provisions and purposes of  
21 this MOU.

22 24. **Waiver.** Any waiver by either Party of the terms of this MOU must be in  
23 writing and executed by an authorized representative of the waiving Party and will not  
24 be construed as a waiver of any succeeding breach of the same or other term of this  
25 MOU.

26 25. **Non-Assignment.** Neither Party shall assign, transfer nor subcontract  
27 this MOU nor its rights or duties under this MOU, except as expressly provided for  
28 above, without written consent of the other.

1           26.    **Severability.** The provisions of this MOU are separate and severable. If  
2 any provision of this MOU is found by a court of competent jurisdiction to be invalid,  
3 illegal or unenforceable, the validity, legality and enforceability of the remaining  
4 provisions shall not be affected or impaired thereby. Any such provision will be  
5 enforced to the maximum extent possible so as to affect the reasonable intent of the  
6 Parties and will be reformed without further action by the Parties to the extent  
7 necessary to make such provision valid and enforceable.

8           27.    **Waiver of Default.** Waiver of any default by either Party to this MOU shall  
9 not be deemed to be a waiver of any subsequent default. Waiver of breach of any  
10 provision of this MOU shall not be deemed to be waiver of any other or subsequent  
11 breach, and shall not be construed to be a modification of the terms of this MOU unless  
12 this MOU is modified as provided above.

13           28.    **Independent Contractor.** Each Party will be, and is, an independent  
14 contractor, and is not an employee or agent of the other Party, and neither Party nor  
15 any person engaged by a Party to perform the services described herein is covered by  
16 any employee benefit plans provided to the employee of the other Party. Each Party is  
17 liable for the acts and omissions of itself, its employees, its subcontractors and its  
18 agents. Nothing in this MOU will be construed as creating an employment or agency  
19 relationship between the Court and the County. Each Party will determine the method,  
20 details and means of performing its obligations under this MOU, including, without  
21 limitation, exercising full control over the employment, direction, compensation and  
22 discharge of all persons assisting the respective Party. Each Party will be solely  
23 responsible for all matters relating to the payment of its employees, including  
24 compliance with social security, withholding any and all employee benefits, and all  
25 regulations governing such matters.

26           29.    **Risk Allocation.** It is the intention of both Parties that neither will be  
27 responsible for the negligent and/or intentional acts and/or omissions of the other, or its  
28 judges, subordinate judicial officers, directors, officers, agents and employees. The

1 Parties therefore disclaim in its entirety the prorated risk allocation that could otherwise  
2 apply to this MOU pursuant to Government Code 895.6. Instead, pursuant to  
3 Government Code Section 895.4, the Parties agree to use principles of comparative  
4 fault when apportioning any and all losses that may arise out of the performance of this  
5 MOU.

6 30. **Counterparts.** This MOU may be executed in counterparts, each of  
7 which is considered an original but all of which together shall constitute one instrument.

8 31. **Choice of Law.** Venue for any action arising out of or relating to this  
9 MOU shall be in Fresno County, California. The rights and obligations of the Parties  
10 and all interpretation and performance of this Agreement shall be governed in all  
11 respects by the laws of the State of California.

12 32. **Insurance.** Without limiting the indemnification of each Party, it is  
13 understood and agreed that the Parties shall each maintain, at their sole expense,  
14 insurance policies or self-insurance programs including, but not limited to, an insurance  
15 pooling arrangement and/or Joint Powers Agreement to fund their respective liability  
16 throughout the term of this agreement. Coverage shall be provided for comprehensive  
17 general liability, automobile liability, professional liability, and worker's compensation  
18 exposure. Evidence of insurance, certificates of insurance, or other similar  
19 documentation shall not be required of either Party under this MOU.

20 **Notices**

21 33. The persons and their addresses having authority to give and receive  
22 notice under this Agreement include the following:

<b>Court</b>	<b>County</b>
Sheran L. Morton	Oscar J. Garcia, CPA
Court Executive Officer	Auditor-Controller/Treasurer-Tax Collector
Superior Court of California	County of Fresno
1100 Van Ness	2281 Tulare Street, Room 105
Fresno, CA 93724-0002	Fresno, CA 93721

1 All notices between the County and the Court provided for or permitted under  
2 this Agreement must be in writing and delivered either by personal service, by first-  
3 class United States mail, by an overnight commercial courier service, or by telephonic  
4 facsimile transmission. A notice delivered by personal service is effective upon service  
5 to the recipient. A notice delivered by first-class United States mail is effective three  
6 Court business days after deposit in the United States mail, postage prepaid,  
7 addressed to the recipient. A notice delivered by an overnight commercial courier  
8 service is effective one Court business day after deposit with the overnight commercial  
9 courier service, delivery fees prepaid, with delivery instructions given for next day  
10 delivery, addressed to the recipient. A notice delivered by telephonic facsimile is  
11 effective when transmission to the recipient is completed (but, if such transmission is  
12 completed outside of Court business hours, then such delivery shall be deemed to be  
13 effective at the next beginning of a Court business day), provided that the sender  
14 maintains a machine record of the completed transmission. For all claims arising out of  
15 or related to this Agreement, nothing in this section establishes, waives, or modifies any  
16 claims presentation requirements or procedures provided by law, including but not  
17 limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code,  
18 beginning with section 810).

19 [SIGNATURE PAGE FOLLOWS]  
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The Parties are executing this MOU on the date first stated above, to be effective as of the Effective Date.

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF FRESNO

COUNTY OF FRESNO

Sheran L. Morton  
Sheran L. Morton,  
Court Executive Officer

Sal Quintero  
Sal Quintero, Chairman of the Board of  
Supervisors of the County of Fresno

1100 Van Ness Avenue  
Fresno, CA 93724-0002  
Mailing Address

ATTEST:  
Bernice E. Seidel  
Clerk to the Board of Supervisors  
County of Fresno, State of California

By: Susan Bishop  
Deputy