

**PARTICIPATION AGREEMENT FOR
COLLECTION SERVICES PURSUANT TO
MASTER AGREEMENT MA-201306 BY:**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF EL DORADO

AND

LINEBARGER GOGGAN BLAIR & SAMPSON, LLP

THIS PARTICIPATION PARTICIPATING AGREEMENT ("Agreement"), is made and entered into as of this __ day of January, 2017, by and between the Superior Court of California, County of El Dorado, a California judicial branch entity and officially acting pursuant to California law, located at 2850 Fairlane Court, Building C, Placerville, CA 95667 ("Court"), and Linebarger Goggan Blair & Sampson, LLP, a Texas Limited Liability Law Partnership with local office location in 3150 El Camino Real, Suite D, Carlsbad, CA 92008 and main administrative offices location at 2700 Via Fortuna, Suite 400, Austin, TX 78746 ("Contractor").

WHEREAS, Contractor and the Judicial Council of California, on behalf of the Superior Courts and Counties of the State of California, are parties to that Master Agreement No. MA-201306 ("Master Agreement") for collections services effective January 1, 2014 arising from the Statewide Collection Services for Court-Ordered and other Debt - Request for Proposal No.: ECU-2013-01 (hereafter the "Request For Proposal");

WHEREAS, the Master Agreement sets forth the terms and conditions upon which Contractor will provide collections services to the superior courts, counties, and certain other designated entities in the State of California, should any such party desire to engage Contractor for such services;

WHEREAS, Court pursues initial collection efforts on all accounts it establishes for unpaid fees, fines, forfeitures, penalties and assessments arising from criminal and traffic actions or proceedings;

WHEREAS, Court desires to engage Contractor to perform collection services ("Services") in accordance with the Master Agreement on selected accounts established by the Court and not fully paid 30 or more days from the date of their assessment or imposition, or on which an installment payment is not fully paid within 30 days of the date such payment was due under an installment payment plan ("Accounts").

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. Participation of Court Engagement of Contractor. Court engages Contractor to perform additional collection services on Accounts transferred to Contractor by Court, and Contractor will provide such services, on the same terms and conditions and as if such services were provided by Contractor under the Master Agreement, except where specifically stated herein. Terms defined in the Master Agreement will have the same meaning when used herein.

2. Scope of Services. Accounts transferred to Contractor for collection services under this Agreement will qualify for Services.
 - a. *Collection Services.* Contractor will perform collections activities on the Accounts transferred to it as set forth in Exhibit A, Statement of Work (the "Services") of the Master Agreement, except where specifically stated herein.

 - b. *Court Ordered Debt Program.* Contractor may refer Accounts it receives, and as are determined by the parties to be appropriate for referral, to the FTB Court Ordered Debt ("COD") Program, liaise with FTB regarding such Accounts, and administer such Accounts under the terms and conditions set forth in Section 1.3 Exhibit A of the Master Agreement.

 - c. Contractor may refer to the FTB COD Program Accounts that are determined by the parties to be appropriate for referral, and that meet the criteria set forth in Revenue and Taxation Code Section 19280, and all of the following criteria:
 1. The remaining balance owed on the case is \$100 or more, or as otherwise agreed between the parties in writing;

 2. Court records regarding the Account indicate that, during the past twelve (12) months, no payments have been received, no new payment plan has been agreed to by the defendant, and no adjustments have been made by the Court on the Account;

 3. the Account has not been rejected by the FTB COD Program for any reason, or returned to the Court as uncollectible.

 - d. *Tax Intercept Program.* In addition to other Services provided hereunder, Contractor may refer accounts to the FTB Tax Intercept Program. Accounts eligibility will be agreed

upon in writing by the parties. Contractor will forward eligible Accounts to the FTB, liaise with FTB regarding such Accounts, and perform the equivalent administrative functions regarding such Accounts as that set forth in Section 1.3 of Exhibit A of the Master Agreement.

Contractor will forward to the Court within 5 days of receipt from FTB of each calendar month (or other date as agreed by the parties) during the term of this Agreement via electronic transfer or remittance check representing the total amount of funds received by Contractor on Accounts during such period, with accompanying statements.

- e. *Account Recall.* Court may recall an Account transferred for collection if during the past twelve (12) months no payments have been received, no new payment has been agreed to by the debtor, and no adjustments have been made by the Court. Court may recall an Account transferred to collection, at any time if such recall is ordered by the El Dorado Superior Court judicial officer.
- f. *Contractor will, in the collection of accounts.* Remit the entire gross amount of all receivables collected to the Court in electronic format on a daily basis, together with supporting documentation, pursuant to Section 1.1.1(h) of the Master Agreement.

3. Contacts. Each of the Court and the Contractor will appoint a Project Manager, who will be authorized to make day-to-day decisions related to the implementation of this Agreement that do not substantially limit rights or expand the responsibilities of the Court or the Contractor, subject to paragraph 12 below. The respective Project Managers and their contact information are as follows:

Court Project Manager

Name: Tania G. Ugrin-Capobianco
Title: Court Executive Officer
Address: 2850 Fairlane Court, Building C
Placerville, CA 95667
Phone: 530-621-5155
Email: tania@eldoradocourt.org

Contractor Project Manager

Name: Mark Lombardo
Title: National Sales Manager
Address: 3150 El Camino Real, Suite D
Carlsbad, CA 92008
Phone: 800-561-0218
Email: mark.lombardo@lgbs.com

4. Payment and Pricing Structure. Contractor shall invoice Court on a monthly basis for Commission Fees charged for its collections services under this Agreement, which will be the applicable fee percentage based on the Fee Schedule attached hereto as Schedule A, calculated

each month on the total funds collected during such month on all Accounts transferred to Contractor under this Agreement.

5. On-site personnel. Contractor shall provide on-site staff at public counter areas to assist the public as set forth in Section 1.2 of Exhibit A of the Master Agreement.

Contractor will employ and pay employee(s) to assist the Courts in handling Collection related functions. The selection of employee(s) is the task of Contractor. The Court will provide feedback on the employee(s) performance to Contractor. Contractor will provide one full time employee for the Court's Placerville Branch.

6. Reporting Requirements. Notwithstanding the required reports and schedule of reports set forth in the Master Agreement, the parties hereto agree that Contractor will provide reports on a schedule mutually agreed upon by the parties. Daily Payment Transmittal Report and Daily Adjustment Report will be provided by Contractor to Court pursuant to Sections 1.5.3 and 1.5.4 of the Master Agreement. Contractor will provide additional reports upon request by the Court.

7. Term. The respective duties and obligations of the parties hereto shall commence on the date first written above, and shall continue in full force and effect in conjunction, and in accordance, with the term provisions contained in the Master Agreement unless the options to extend are not renewed by the Judicial Council of California or the Master Agreement is earlier terminated. Notwithstanding the foregoing, either party may terminate all or any of the services under this Agreement by giving ninety (90) days written notice to the other party. In addition, this Agreement is expressly conditioned upon the ability of the Court under currently applicable California state law and policy to pay Contractor for services hereunder from revenue collected by Contractor on the Accounts. If any applicable law or policy is amended or enacted such that the revenue under this Agreement may not be applied to Court obligations under this Agreement, the Court may, by written notice, terminate this Agreement on the effective date of such amended or enacted law or policy.

8. Credit Reporting. To protect and insulate Court from the risk inherent in credit bureau reporting, Contractor will not report outstanding receivables on behalf of the Court to credit bureaus.

9. Independent Contractor. Contractor is, for all purposes, an independent contractor and shall not be deemed an employee of the Court.

- a. The Contractor specifically acknowledges that it controls the manner and means by which the product is accomplished, agrees to hold itself out as an independent contractor, and waives any rights to claim that it is an employee of the Court under the common law agency test, the economic realities test, or any other legal test.

- b. It is expressly understood and agreed that the Contractor shall in no event, as a result of this contract or any work performed under this contract, be entitled to any benefits to which Court employees are entitled, including but not limited to overtime or other pay differentials, retirement benefits, social security benefits, disability insurance benefits, unemployment compensation or insurance, workers' compensation benefits, and injury, vacation, sick, or other leave or employment benefits. The Contractor expressly agrees that all legal recourse for performance and severance of the relationship between it and the Court is set forth in this Agreement, and not in any statutes or case law relating to rights of employees.
 - c. The Contractor agrees to notify its own employees that they are not employees of the Court and are not entitled to any benefits to which County/Court employees are entitled, as set forth above. The Contractor furthermore agrees to indemnify, defend and hold harmless the Court, its judges, subordinate judicial officers, officers and employees, from any such claims made by employees of the Contractor.
10. Indemnification. Contractor shall indemnify and save harmless Court and its respective judges, subordinate judicial officers, officers, agents and employees from and against any and all loss, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, resulting directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, the use of Contractor's facilities or equipment provided by Court or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on Court, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of Court and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee.
11. Entire Agreement. This Agreement and the incorporated documents constitute the entire understanding between the parties and supersede any and all prior understandings and agreements, oral or written, relating to the subject matter of this Agreement. Each party acknowledges that no representations, inducements, promises, or agreement, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not included in this Agreement, and no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.
12. Amendment. No alteration or amendment to the terms of this Agreement shall be valid unless it is made in writing and is signed by the parties, and no oral understanding or agreement shall be binding on the parties.

13. Assignment. Inasmuch as this Agreement is intended to secure the specialized services of Contractor, Contractor may not assign, transfer, delegate or sublet any interest herein without the prior written consent of Court.
14. Governing Law. This Agreement will be construed under the laws of the state of California, without regard to its conflict of law provisions.
15. Waiver. Any waiver by either party of a breach of any of the terms of this Agreement will not be construed as a waiver of any succeeding breach of the same or other term of this Agreement.
16. Further Assurances. Each party hereto agrees to cooperate with the other, and to execute and deliver, or cause to be executed and delivered, all such other instruments and documents, and to take all such other actions as may be reasonably requested of it from time to time to effectuate the provisions and purposes of this Agreement.
17. Severability. If any part of this Agreement is held unenforceable, all other parts remain enforceable.
18. Time. Time is of the essence in the performance of services under this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF EL DORADO/COURT
COLLECTIONS

LINEBARGER GOGGAN BLAIR &
SAMPSON, LLP

By: _____

By: _____

Name: Suzanne N. Kingsbury

Name: Scott McGlasson

Title: Presiding Judge

Title: Partner

Date: _____

Date: _____

SCHEDULE A
**TO PARTICIPATION AGREEMENT
FOR COLLECTION SERVICES
BY AND BETWEEN:**

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF EL DORADO
AND
LINEBARGER GOGGAN BLAIR & SAMPSON, LLP**

Exhibit B to the Master Agreement, entitled "Fee Schedule" is hereby amended and supplemented as follows:

1. 14.6% for all Accounts less than one year from failure to pay or failure to appear date, and 17.9% for Accounts one year plus from failure to pay or failure to appear date. These rates exclude on-site personnel.
2. On-Site Personnel section charges to Court will be \$15.00 per hour for a clerk provided under Paragraph 1.2 of the Master Agreement. Contractor shall separately invoice Court on a monthly basis for reimbursement for these charges in addition to Commission Fees charged for its collections services under this Agreement pursuant to Paragraph 4 of this Agreement.
3. "Direct Restitution To Victim" ordered pursuant to California Penal Code §1202.4(a)1 shall remain at 10% or 15%, as ordered on the case;
4. Fee for FTB Transfer Services shall remain at 50% of the Commission Fee of the net collected by the FTB.
5. Second Placement Note of the Master Contract shall not apply to accounts transitioned to Contractor from El Dorado County Revenue Recovery. The fee applicable to such transitioned Revenue Recovery accounts shall be as set forth in Paragraph 1 above.
6. Except as amended hereby, all other Fees set forth in MSA No. MA-201306, Exhibit B, Fee Schedule shall remain applicable.