

MODEL CONTRACT

This Agreement, hereinafter referred to as "Contract" is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California; hereinafter referred to as "County," and NAVEX Global, Inc., with a place of business at 6000 Meadows Road Suite 200 Lake Oswego OR 97035; hereinafter referred to as "Contractor," with County and Contractor sometimes referred to as "Party", or collectively as "Parties."

RECITALS

WHEREAS, Contractor responded to a Request for Proposal ("RFP") for providing Equal Employment Opportunity Training Services for the County; and

WHEREAS, the Contractor responded and represented that its proposed services shall meet or exceed the requirements and specifications of the RFP; and

WHEREAS, the County Board of Supervisors has authorized the Purchasing Agent or his designee to enter into a Contract for Equal Employment Opportunity Training Services with the Contractor;

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

General Terms and Conditions:

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.
- B. **Entire Contract:** This Contract, including Attachments A, B, and C and Exhibit A which are attached hereto and incorporated herein by this reference, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or his designee, hereinafter "Purchasing Agent."
- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California State sales or use tax.
- E. **Delivery:** Time of delivery of services is of the essence in this Contract. County reserves the right to refuse any services and to cancel all or any part of the descriptions or services that do not conform to the prescribed statement of work. Delivery shall not be deemed to be complete until all services have actually been received and accepted in writing by County.
- F. **Acceptance/Payment:** Unless otherwise agreed to in writing by the County, I) acceptance shall not be deemed complete unless in writing and until all the services have actually been received to the satisfaction of County, and

2) payment shall be made in arrears after satisfactory acceptance.

- G. Warranty: Contractor warrants that: (i) all products, as delivered and when used in accordance with the then-current documentation, will perform in all material respects as specified in such documentation; and (ii) all services will be performed in a professional manner in accordance with industry standards. County's exclusive remedy for any breach of this warranty is for Contractor to diligently remedy any errors or defects in the products that caused the breach, re-perform the services, or for County to terminate the Contract and receive a pro rata refund of payments made based on the months remaining under the Contract divided by the total number of Contract months. . In no event will Contractor be obligated to correct, cure or otherwise remedy any error or defect in the products or services resulting from components or content not provided by Contractor, or use by County other than in accordance with the documentation. **OTHER THAN AS EXPRESSLY STATED IN THIS AGREEMENT, CONTRACTOR DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE PRODUCTS AND SERVICES, INCLUDING ANY IMPLIED BY LAW (SUCH AS THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE).**
- H. Patent/Copyright Materials/Proprietary Infringement: Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "HH" below, it shall indemnify, defend and hold County and County Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses; except that Contractor is not responsible to the extent that a claim arises due to the combination of a product or service with a product or service not provided by Contractor, and any changes to a Contractor product or service not made or authorized [KS1] by Contractor (excluding components added by County), if in each case no claim would have otherwise arisen. Should County's use of products or services be determined by a court of competent jurisdiction to infringe the intellectual property rights of a third party, or a claim for infringement be made against the County, or if in Contractor's sole judgment such use is likely to infringe, Contractor may, at its sole option and its own expense: (i) procure for Contractor the right to continue using such products or services; (ii) replace or modify the products or services to make their use non-infringing (provided that such modifications do not materially and adversely change the product or service with respect to County); or (iii) cease to provide the product or services and refund to County on a pro rata basis any prepaid fees for products or services not used. Contractor's exercise of the options provided in the immediately preceding sentence shall not limit Contractor's indemnity obligations herein.
- I. Assignment or Sub-Contracting [KS2]: The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or sub-contracted by Contractor without the express written consent of County, except that Contractor may assign its entire interest in this Contract to an affiliate or in connection with Contractor's acquisition by another entity, whether by merger or purchase of capital stock or assets. Any other attempt by Contractor to assign or sub- contract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- J. Non-Discrimination: In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.
- K. Termination [KS3]: In addition to any other remedies or rights it may have by law, either party has the right to terminate this Contract for cause without penalty after 30 days' written notice and opportunity to cure, unless otherwise specified. Cause shall be defined as any material breach of Contract, or any misrepresentation or fraud on the part of, the other party. Exercise by a party of its right to terminate the Contract shall relieve such party of all further obligations.
- L. Consent to Breach Not Waiver: No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not

constitute consent to, waiver of, or excuse for any other different or subsequent breach.

M. Remedies Not Exclusive: The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either party to any other remedies provided by law.

N. Independent Contractor: Contractor shall be considered an independent Contractor and neither Contractor nor its employees; nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.

O. Performance: Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by sub-contractors.

P. Insurance Provision:

Prior to the provision of services under this contract, the contractor agrees to purchase all required insurance at contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this contract.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in an amount in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management.

If the contractor fails to maintain insurance acceptable to the County for the full term of this contract, the County may terminate this contract.

Qualified Insurer

Minimum insurance company ratings as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com shall be A- (Secure A.M. Best's Rating) and VIII (Financial Size Category).

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier). If the carrier is a non-admitted carrier in the state of California and does not meet or exceed an A.M. Best rating of A-/VIII, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings. If the non-admitted carrier meets or exceeds the minimum A.M. Best rating of A- IVIII, the agency can accept the insurance.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory

Professional Liability Insurance

\$1,000,000 per claims made or
per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 0 I, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 OJ, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 I 0 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that the contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

All insurance policies required by this contract shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

Contractor shall notify County within 14 days of any cancellation and provide a copy of the cancellation notice to County

If contractor's Professional Liability policy is a "claims made" policy, contractor shall agree to maintain professional liability coverage for two years following completion of contract.

The Commercial General Liability policy shall contain a severability of interests' clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the contractor fails to provide the insurance certificates and endorsements within seven days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements which shall be mutually agreed upon. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, County may within thirty days thereafter terminate this Contract, but will not be entitled to any refunds.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

- Q. Bills and Liens: Contractor shall pay promptly all indebtedness for labor, materials, and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph "HH" below, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
- R. Changes: Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- S. Change of Ownership: Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
- T. Force Majeure: Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 72 hours or as soon as is reasonably possible following the start of the delay and Contractor avails himself of any available remedies.
- U. Confidentiality:

- (i) Definition. "Confidential Information". "Confidential Information" means any information disclosed by either party to the other party in connection with the parties' relationship during the term of this Contract, either directly or indirectly, in writing, orally or by inspection of tangible objects which pertains to such party's business, including, without limitation, technical, marketing, financial, employee, planning, product roadmaps and documentation, performance results, pricing, and other confidential or proprietary information or that a reasonable person would understand to be confidential or proprietary. Contractor considers as its Confidential Information its product roadmaps and planned functionality and market strategies. Confidential Information of either party will not, however, include any information which (a) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (b) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party; (c) is already in the possession of the receiving party at the time of disclosure by the disclosing party; (d) is obtained by the receiving party from a third party without a breach of such third party's obligations of confidentiality; (e) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information; or (f) is divulged pursuant to any legal proceeding or otherwise required by law, provided that, to the extent legally permissible, the receiving party will notify the disclosing party promptly of such required disclosure and reasonably assist the disclosing party in efforts to limit such required disclosure.
- (ii) Disclosure of Confidential Information. Both Contractor and County shall (a) hold all Confidential Information in confidence and use it only for the permitted purpose in connection with the services provided under this Contract; (b) reproduce Confidential Information only as reasonably required in furtherance of the services provided under this Contract; (c) restrict disclosure of Confidential Information only to its employees with a need to know; and (d) take all reasonable precautions that its employees comply with the confidentiality obligations under this Contract. Neither party shall disclose Confidential Information to third parties without the other party's prior written consent, or unless required by law. Either party will promptly notify the disclosing party of any accidental or unauthorized disclosure or loss of the disclosing party's Confidential Information and will cooperate with the disclosing party to remedy such disclosure or loss to the extent reasonably practical.
- (iii) Injunctive Relief. If a party breaches or threatens to breach its confidentiality obligations under this Contract, then the other party, in addition to other available remedies, has a right to injunctive relief, inadequate money damages and irreparable harm being acknowledged. In such an instance, each of the parties hereby waives the requirement for the posting of a bond.
- (iv) Subpoena Response. If Contractor receives process, including a subpoena, in respect of litigation or a dispute involving County (but not Contractor), that requests or seeks the production of documents

or the disclosure of information concerning County, Contractor, if legally permitted, shall notify and deliver a copy of the process to County at the address for notices set forth in this Contract. In such event, County shall assume the responsibility for responding to such process and shall pay the expenses incurred by Contractor in responding to said process, including costs, expenses and attorneys fees. If County fails to assume the response to process, Contractor shall respond to the extent that it determines, in its reasonable discretion that it is required to do so and shall invoice County for any associated fees or expenses.

(v) Use of Feedback. Any suggestions, feedback, or other information from the receiving party concerning Confidential Information of the disclosing party are and shall be entirely voluntary on the receiving party's part, whether such suggestions, feedback or other information was solicited by the disclosing party or not, and shall not create any obligations on the part of the disclosing party. The disclosing party shall be free to disclose and use such suggestions, feedback, and other information of the receiving party as the disclosing party sees fit, entirely and without obligation of any kind to the receiving party.

V. Compliance with Laws: Contractor represents and warrants that services to be provided under this Contract shall fully comply with the description of Services in Exhibit A, [KS4] at Contractor's expense. Contractor further warrants the Services content underwent rigorous content development and external review. To that affect, Contractor has provided a Memorandum dated September 20, 2012, (hereinafter the "Memo") representing the content of the WPH5 course addresses the requirements set forth in California Government Code section 12950.1 (2003-2004 sess., A.B. 1825), with all federal, state and local laws including, but not limited to those laws issued by County in its governmental capacity, Contractor acknowledges that with respect to the services provided by Contractor, County is relying on Contractor to ensure compliance with federal, state and local laws, and pursuant to the requirements in paragraph "HH" below, Contractor agrees that it shall indemnify and hold County and County Indemnities harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws by Contractor.

W. Freight (F.O.B. Destination): INTENTIONALLY LEFT BLANK

X. Pricing: The Contract bid price shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the scope of work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.

Y. Waiver of Jury Trial: Each Party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Contract and /or any other claim of injury or damage.

Z. Terms and Conditions: Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.

AA. Headings: The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

BB. Severability: If any term, covenant, condition, or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

CC. Calendar Days: Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

DD. Attorney Fees: In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.

EE. Interpretation: This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party has been represented by

experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the parties and this Contract.

- FF. Authority: The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
- GG. Employee Eligibility Verification: The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees, consultants and subcontractors performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employee, consultants and subcontractors for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- HH. Indemnification Provision: Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the Contractor's negligence or misconduct pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment. County will promptly provide Contractor with notice in writing of any claim, promptly tender the control of the defense and settlement of any such claim, and cooperate fully with Contractor (at Contractor's request and expense) in defending or settling such claim, including but not limited to providing any information or materials necessary for Contractor to perform the foregoing.
- II. Disclaimer: Contractor's products and services provide tools for use in complying with applicable laws. In providing these tools, Contractor does not provide legal advice, or otherwise act in the capacity of an attorney. County will not rely solely on its use of the products and services in complying with applicable laws, and will seek appropriate legal advice or counsel in implementing and operating its compliance programs. Except for the warranty provided in Section V regarding California Government Code section 12950.1 (2003-2004 sess., A.B. 1825), CONTRACTOR EXPRESSLY DOES NOT WARRANT THAT THE PRODUCTS AND SERVICES WILL MEET THE REQUIREMENTS OF ANY PARTICULAR FEDERAL, PROVINCIAL, STATE OR LOCAL LAWS, REGULATIONS OR GUIDELINES. In addition, County understands that communications between County and Contractor are not legally privileged.[K55]

JJ. LIMITATION OF LIABILITY. TO THE EXTENT PERMITTED BY LAW AND EXCEPT WITH RESPECT TO (I) FAILURE TO PAY AMOUNTS PROPERLY OWED, (II) BREACHES OF PARAGRAPH U (CONFIDENTIALITY), (III) VIOLATIONS OF EITHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, (IV) PERSONAL INJURY OR PROPERTY DAMAGE, (V) MATTERS COVERED BY THE INSURANCE COVERAGE UNDER PARAGRAPH P (ONLY IF THE INSURANCE COVERAGE REQUIREMENTS EXCEED THE LIMITATION IN THIS PARAGRAPH JJ) OR (VI) THE INDEMNIFICATION OBLIGATIONS UNDER PARAGRAPH HH, (A) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY, WHETHER UNDER THEORY OF CONTRACT, TORT OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, OR SPECIAL DAMAGES (INCLUDING ANY

DAMAGE TO BUSINESS REPUTATION, LOST PROFITS OR LOST DATA), WHETHER FORESEEABLE OR NOT AND WHETHER SUCH PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (B) EACH PARTY'S AGGREGATE CUMULATIVE LIABILITY TO THE OTHER, IN CONNECTION WITH THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE SERVICES SHALL NOT EXCEED, IN THE AGGREGATE AND REGARDLESS OF WHETHER UNDER THEORY OF CONTRACT, TORT OR OTHERWISE, THE TOTAL OF THREE (3) TIMES THE FEES ACTUALLY PAID AND THE FEES PAYABLE TO CONTRACTOR UNDER THIS AGREEMENT DURING THE ONE (1) YEAR PERIOD PRIOR TO THE DATE THAT SUCH LIABILITY FIRST ARISES.

Additional Terms and Conditions:

1. Scope of Contract: This Contract specifies the contractual terms and conditions by which the County will procure services from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as "Attachment A".
2. Term of Contract: This Contract shall commence upon approval by the County or upon execution of all necessary signatures, whichever occurs later, and shall be effective for a ~~two-four (4) |KS6|~~ year term; ~~renewable for two additional one (1) year periods.~~
3. Contingency of Funds: Contractor acknowledges that funding or portions of funding for this Contract may also be contingent upon the receipt of funds from, and/or appropriation of funds by, the state of California to County. If such funding and/or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
4. Fiscal Appropriations: This contract is subject to and contingent upon applicable budgetary appropriations being approved by the County of Orange Board of Supervisors for each fiscal year during the term of this contract. If such appropriations are not approved, the contract will be terminated without penalty to the County.
5. Adjustments- Scope of Work: No adjustments made to the scope of work will be authorized without prior written approval of the County assigned Deputy Purchasing Agent.
6. Amendments- Changes/Extra Work: The Contractor shall make no changes to this Contract without the County's written consent. In the event that there are new or unforeseen requirements, the County with the Contractor's concurrence has the discretion to request official changes at any time without changing the intent of this Contract.

If County-initiated changes or changes in laws or government regulations affect price, the Contractor's ability to deliver services, or the project schedule, the Contractor shall give the County written notice no later than fourteen calendar days from the date the law or regulation went into effect or the date the change was proposed by the County and the Contractor was notified of the change. Such changes shall be agreed to in writing and incorporated into a Contract Amendment; said Amendment shall be issued by the County-assigned DPA, and shall require the mutual consent of all Parties, and may be subject to approval by the County Board of Supervisors. Nothing herein shall prohibit the Contractor from proceeding with the work as set forth in this Contract.

7. Breach of Contract: The failure of either party to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the either party may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

Terminate the Contract immediately, pursuant to Section K herein;

Afford the other party written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;

Discontinue payment to the Contactor or Discontinue services for the County for and during the period in which the Contractor is in breach;

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Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.

8. Contractor- Change in Ownership: The contractor agrees that if there is a change in ownership prior to completion of this contract, the new owner will be required, under terms of sale, to assume this contract and complete it to the satisfaction of the County.

9. Conditions Affecting Work: The Contractor shall be responsible for taking all steps reasonably necessary, to ascertain the nature and location of the work to be performed under this Contract; and to know the general conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.

10. Conflict of Interest- Contractor's Personnel: The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; sub-tier Contractors; and third Parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.

11. Conflict of Interest - County Personnel: The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The contractor shall not, during the period of this contract, employ any County employee for any purpose.

12. Contingent Fees: The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees of the contractor or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

For breach or violation of this warranty, the County shall have the right to terminate this contract in accordance with the termination clause and at its sole discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee from the contractor.

13. Contractor Bankruptcy/Insolvency: If the contractor should be adjudged bankrupt or should have a

general assignment for the benefit of its creditors or if a receiver should be appointed on account of the contractor's insolvency, the County may terminate this contract.

14. Contractor Personnel- Reference Checks: The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility anticipated under this Contract. Contractor's employees assigned to work at any County location on this project must meet character standards as demonstrated by background investigation and reference checks by Contractor.

15. Contractor's Project Manager and Key Personnel: Contractor shall appoint a competent employee to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This employee- may be replaced on the project upon County's reasonable request for underperformance.

The Contractor's Project Manager shall be assigned to this project for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines. The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager from providing services to the County under this Contract. The County's Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal promptly after written notice by the County's Project Manager. The County is not required to provide any additional information, reason or rationale in the event it elects to request the removal of Contractor's Project Manager from providing services to the County under this Contract.

16. Contractor's Records: With respect to any charges for time (as opposed to a fixed fee), Contractor shall keep an accurate record of time expended by Contractor in the performance of this Contract. Such record shall be available for periodic inspection by the County at reasonable times. Such records will be retained for four (4) years after the expiration or termination of this Contract.

17. County Of Orange Child Support Enforcement [Within Ten (10) Days Of Notification Of Selection For Award Of Contract]: In order to comply with the child support enforcement requirements of the County of Orange, within ten (10) days of notification of selection of award of Contract but prior to official award of Contract, the selected Contractor agrees to furnish the following to the Contract administrator, the Purchasing Agent, or the agency/department deputy purchasing agent:

- a. In the case of an individual contractor, his/her name, date of birth, Social Security number, and residence address;
- b. In the case of a contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of ten (10) percent or more in the contracting entity;
- c. A certification that the contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
- d. A certification that the contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

Failure of the Contractor to timely submit the data and/or certifications required may result in the Contract being awarded to another Contractor. In the event a Contract has been issued, failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within sixty (60) calendar days of notice from the County shall constitute grounds for termination of the Contract.

18. Data- Title To: All materials, documents, data or information obtained from the County data files or any County medium furnished to the contractor in the performance of this contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this contract without the express written consent of the County. All materials, documents, data or information, including copies, must

be returned to the County at the end of this contract.

19. Disputes - Contract:

- a. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's project manager and the County's project manager, such matter shall be brought to the attention of the County Purchasing Agent by way of the following process:
 1. The Contractor shall submit to the agency/department assigned DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
 2. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.
- b. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the provision of services under this Contract. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If the County fails to render a decision within ninety (90) days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for Cause or Terminate for Convenience [K57] as stated in Section K herein.

20. Entire Contract: This contract and all of its attachments comprise the entire contract between the contractor and the County. Additional or new terms contained in this contract which vary from the contractor's proposal are deemed accepted by the contractor by execution of this contract or other commencement of performance hereunder. All previous proposals, offers, discussions, preliminary understandings, and other communications relative to this contract, oral or written, are hereby superseded, except to the extent that they have incorporated into this contract. No future waiver of, exception to, addition to, or alteration of any of the terms, conditions and/or provisions of this contract shall be considered valid unless specifically agreed to in writing by both parties.
21. Gratuities: The Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the County in procuring on the open market any services which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
22. News/Information Release: The contractor agrees that it will not issue any news releases in connection with either the award of this contract or any subsequent amendment of or effort under this agreement without first obtaining review and written approval of said news releases from the County through the County's project manager.
23. Notices: Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the

parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

For Contractor: NAVEX Global, Inc.
Attention: Legal
Address: 6000 Meadows Road Suite 200
Lake Oswego OR 97035

For County: County of Orange
County Procurement Office
1300 South Grand Ave., Bldg. A, 2nd Floor
Santa Ana, CA
92705

24. Ownership of Documents: Unless otherwise agreed in writing, Contractor retains ownership of all respective proprietary rights, including all patent, copyright, trade secret, trademark, trade name and other intellectual property rights, in and to the products, the services, content of the services, documentation, and all related updates, upgrades, modifications, improvements and derivative works.
25. Precedence: The Contract documents consist of this Contract and its attachments and exhibits. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the articles of this Contract, and then the exhibits and attachments.
26. Project Manager, County: The County shall appoint a project manager to act as liaison between the County and the contractor during the term of this contract. The County's project manager shall coordinate the activities of the County staff assigned to work with the contractor.

The County's project manager shall have the right to require the removal and replacement of the contractor's personnel. The County's project manager shall notify the contractor in writing of such action. The contractor shall accomplish the removal within 14 calendar days after written notice by the County's project manager. The County's project manager shall review and approve the appointment of the replacement for the personnel. Said approval shall not be unreasonably withheld.

27. Reports/Meetings: The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's project manager and the contractor's project manager will meet on reasonable notice to discuss the Contractor's performance and progress under this Contract. If requested, the contractor's project manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
28. Termination- Orderly: Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract.
29. Publication: [Deleted]
30. Errors and Omissions: All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as

project manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

31. Additional Services Terms for Online Courses. The following additional terms apply to the online training services:
- A. GRANT OF LICENSE. Subject to the payment of all fees due hereunder, and in compliance with all terms and conditions of the Contract, Contractor grants to County the nonexclusive, non-sublicensable (except as specially permitted by Contractor) non-transferable right and license to access, use and display the "Online Courses" purchased by County solely for its own internal use. No right is granted to modify the Online Courses in any way, or to create derivative works of the Online Courses without the written consent of Contractor. Contractor reserves all other right, title and interest in the Online Courses.
 - B. LICENSED USERS. A "Licensed User" is defined as an employee or subcontractor of County who launches a licensed Online Course creating a training record in the Learning Management System ("LMS"). The number of Licensed Users who may access the Online Courses annually is set forth on the order form. A Licensed User may access an Online Course at any time during the term of this Contract, including after the Licensed User has completed a licensed Online Course. In the event County's use exceeds the authorized number of Licensed Users, County shall pay Contractor the applicable fees for additional usage.
 - C. ONLINE COURSE CONTENT. The Online Courses and all content (excluding County content) displayed or provided in the Online Courses (the "Content") is protected by copyright pursuant to U.S. copyright laws, international conventions, and other copyright laws, and is owned and controlled by Contractor, its affiliates, or its licensors. The Content may be used only for the internal, noncommercial use of County's employees or contractors, who are subject to written confidentiality agreements, or regulators. County shall abide by any and all additional copyright notices, information or restrictions contained in any of the Content. Contractor shall use commercially reasonable efforts to ensure that the training courses provide County with current and complete information regarding the subject matter of the course, and to update the courses to reflect significant new statutes and court rulings within a reasonable period of time.

Contractor reserves the right to update its technical requirements for the Online Courses in response to software vendor lifecycles, general usage statistics observed from its clients, or for similar reasons. Contractor will post up-to-date technical requirements and configurations it supports at

<http://www.navexglobal.com/products/training/tech-specs>.

STATEMENT OF WORK

EQUAL EMPLOYMENT OPPORTUNITY ONLINE TRAINING SERVICES

I. INTRODUCTION

The County of Orange is a team of dedicated, public-spirited individuals, who together comprise a regional service provider and planning agency committed to maximizing resources and improving the quality of life in Orange County. Our core businesses are public safety, public health, environmental protection, regional planning, public assistance, social services and aviation.

The County is a public sector governmental entity governed by a five member Board of Supervisors and comprised of 25 Agency/Departments with approximately 17,000 employees. Of these, about 3500 are executives, managers and supervisors.

The County of Orange is committed to provide effective EEO training for our executives, managers and supervisors as mandated by California Government Code 12950.1 and also the provision of disability management training. This statement of work however, addresses the County's current commitment, as a best business practice, to provide effective online EEO training to approximately 13,500 non-supervisory employees in a number of geographic locations.

The County's Equal Employment Opportunity (EEO) Access Office is part of the Human Resource Services department. The EEO Access Office is responsible for ensuring that County employees comply with State and Federal EEO laws and with the County's Equal Employment Opportunity Policy and Procedure; providing guidance and counsel on EEO matters to Agency/Department human resource managers, function managers and supervisors; investigating and resolving EEO complaints; ensuring poster compliance; preparing statistical reports that are required by the state and federal government and providing training in the area of EEO.

It is the County's expectation that by providing direct training to both supervisory/management and non-supervisory staff, it will thereby assist in preventing incidents of discrimination, harassment, or retaliation and in reducing or eliminating the liability that is associated with discrimination, harassment and/or retaliation.

II. GENERAL SCOPE OF WORK AND SERVICES

Contractor must be a person, or firm of persons, who, by education, training & experience, and profession, is competent and qualified to act effectively and efficiently as a provider of EEO[KS9] training services on behalf of the County of Orange.

The Contractor shall provide online training for non-supervisory employees. The online training that the contractor develops for the County shall provide information on how to best avoid employment discrimination of protected classes as defined in both state and federal law, hostile work environment, and all other forms of harassment and retaliation and how to report any alleged violation of the laws and/or County policy. Contractor's online training shall effectively educate County's workforce and actually change employee behavior.

The emphasis of the online training shall be practical, not "legalistic," and shall include hypothetical, yet realistic situations with sufficient time devoted to participation/responses with explanations for incorrect responses.

The training sessions [KS10] shall be conducted on a biannual basis beginning in 2013 (implementation date as determined/agreed by County and Contractor) for existing non-supervisory staff and on an as-needed basis for newly hired employees.

Contractor shall refer to and incorporate the County's Equal Employment Opportunity and Anti-Harassment Policy & Procedures within the training.

Contractor shall provide on-going training and/or communications to the EEO Access Office [KS11] to inform them of any necessary changes to the program or other matters of a significant or urgent nature.

ONLINE TRAINING SERVICES

The Online Training Services are fully detailed in Attachment C, as included in Contractor's RFP response and incorporated into the agreement by this reference. [KS12]

TRAINING PROGRAM REQUIREMENTS

- Meet California Government Code 12950.1 requirements

- The online training for non-supervisory employees shall be self-paced
- Approximately 13,500 non-supervisory personnel will participate and complete the online training module/course every two years
- The online training shall present information in short modules [KS13]

CONTENT

The online training shall include, but is not limited to:

- Defining discrimination, harassment and retaliation [KS14]
- Explanation of federal and state laws prohibiting all forms of harassment [KS15], discrimination, and retaliation
- Describing what constitute hostile work environment as defined by state and federal EEO laws and how can it be avoided and/or eliminated [KS16]
- Describing if/when employees have personal liability and if/when they can or do expose the County to liability [KS17]
- Reminding non-supervisory employees of their responsibilities to not engage in the prohibit behaviors and the consequences for violating EEO laws or County policy

The online training shall provide the following features:

- Thorough and legally substantive; course content must be kept up to date and legally accurate
- Interactive, engaging, interesting and enjoyable audio and visual scenarios
- Realistic scenarios related to county employment – office and field assignments [KS18]
- ADA compliant, includes reasonable accommodation, the “interactive process” and diversity [KS19]
- Equal Employment Opportunity Commission (EEOC) protections [KS20]
- Department of Fair Employment & Housing (DFEH) protections [KS21]
- Crafted to deliver rock solid legal content, address the latest trends, and create powerful legal defense
- Address the compliance training needs that represent County’s greatest litigation and compliance risks [KS22]

The focus on non-supervisory online training should include definitions, examples and answers to questions such as, but not limited to the following:

- What should I do if I think I am being retaliated against because I filed a complaint alleging discrimination?
- How do I report EEO violations or harassing behavior?

- What should I do if I am being harassed by my supervisor or other employees?
- What constitutes the legal definition of harassment and **discrimination** [KS23] under both state and federal law
- What should I do if I witness harassment?
- If I report harassment, will it be kept confidential?
- Does harassment have to occur at work for it to be illegal?
- Is it illegal for someone to harass another person who is the same sex, race, color, national origin, religion or who has the same disability?

INTERACTIVE

The online training must include the following, but is not limited to:

- Question and Answer format component - Ask questions and receive answers online
- Test participants understanding of the core concepts
- Require participants to agree to abide by county policies
- Test participants understanding of EEO regulations and **County policies** [KS24] through a series of questions
- Participants will respond to multiple choice options
- Provide correct answers when participants answer the questions incorrectly
- Offer hypothetical, **realistic role-play scenarios** [KS25]
- Prevent participants from moving to the next screen without receiving the content
- Allow participants to go back and review the course content after each course completion
- Allow participants to start/stop the course and to continue from **where** [KS26] he/she last left the training
- **Provide links to:** [KS27]
 - County of Orange EEO Access Office
 - Department of Fair Employment & Housing (DFEH)
 - Equal Employment Opportunity Commission (EEOC)
 - Department of Labor (DOL)
 - Job Accommodation Network (JAN)

TRACKING & REPORTING [KS28]

The online training shall track online participation, including individual's name, department, supervisor's name, job classification, job title, registration date, completion date, last log-in date, policy acknowledgement date and total time spent in course.

Through administrative rights, the online training shall produce customized reports in various downloadable formats with the data identified above including but not limited to agency/department report, County-wide report, range of dates report and offer ability to view administration rights by agency/department, County-wide.

Register new employees [KS29] within two (2) business days and send notices to employees when training is required, send reminder notices to participants on a weekly basis who have not completed the training, and integration with the HRS CAPS+ system.

Archive, maintain, and generate enrollment reports; user reports; and completion records for County access. Through administrative rights, provide the County with options to generate or download such reports or records and the option to upload/update user profile information.

Archive and maintain copies of all training materials and provide County access on an as needed basis in order to prove training compliance.

TRANSITION

Upon execution of the Contract, Contractor shall communicate to the County the requirements necessary prior to establishing the training program. Upon termination of the Contract, the Contractor shall cooperate with the County to the end-stated effective date of the termination in an orderly transfer of administrative responsibilities and records to the County or its representatives.

Upon completion or termination of the Contract, the Contractor shall provide to the County complete final administrative reports, including a listing of any items requiring adjustments/corrections as of the contract termination date.

In addition, the Contractor, pursuant to Article 24 "Ownership of Documents" under the County's terms and conditions of the Contract, is required to provide the County with a soft copy/ CD – ROM/DVD format of the EEO online training. [KS30]

SYSTEM IMPLEMENTATION

~~NAVEX Global is proposing our online Workplace Harassment course for managers and non-managers in English hosted on our LMS. NAVEX Global offers two (2) options for Online Training. Option One: Online training for non-supervisors only; and Option Two: Online Training for both non-supervisors and supervisors. The Online Training for supervisors in Option Two will be complimented by one-hour In-Person training.~~

~~Pre-Implementation: Sales and sales engineering will work with the client to define business needs and scope services to fit those needs. Those services are written into a Master Service Agreement and a Statement of Work. Once executed, the contract is reviewed internally by the sales and implementation team so both are aligned on what is being delivered to the client.~~

~~Implementation: A kickoff call is scheduled with the client to include the Implementation Specialist and the sales representative. During the kickoff, the delivery process is discussed and timelines are agreed to. The Specialist will work with the client to gather needed inputs. Once inputs are gathered, the Specialist will engage teams internally to build and test the courses. Once the courses have passed internal QA requirements, they are delivered to the client on the Learning Management System where the client has 5 days to review the courses. If no further customization is needed, the client is then free to deploy the training as needed. During the course build and QA process, the Specialist will work with the client to configure the Learning Management System and the client will attend an administrative training session. Once the LMS is configured and courses are delivered, the implementation is complete and a meeting is held to transition the client to dedicated support staff members.~~

Contractor will work closely with County's Project Manager and other County staff and fully coordinate all efforts during system implementation process up to final project implementation phase and ensure a successful program launch. Contractor will provide and ensure compliance with the following:

- System implementation and solution steps
- System and program implementation timeline
- IE browser and operating system
- Security measures
- Licensed content hosting options
- Service test during and after implementation
- Number of training sessions
- Participant training options
- Participant self-retrieve and secure log-in
- County system administrators access rights
- Customization features and functionalities
- System Administrator / Participant Help Guide
- System maintenance/support
- System/Program updates/upgrades

Contractor will provide County with a pre-launch internal marketing package, which includes, but is not limited to sample letters, memorandums, e-mails and posters to explain the training program to end users and to encourage them to complete their course assignments, These materials shall be fully customizable.

[KS31]

HOSTING/LMS SERVICES

Contractor shall host online training on Contractor's Learning Management System (LMS) or on County's AICC or SCORM 1.2 compliant LMS.

Contractor shall provide County Administrators with training on Contractor's LMS.

The online training shall have the following operating system / configurations at the minimum:

Windows XP – Windows 7

- Internet Explorer 6.0 – 9.0
- Firefox 3.6, 7.0

Mac OS X 10.5 – 10.7

- Safari 4.0 – 5.1
- Firefox 3.6 – 7.0

STANDARD CUSTOMIZATION PACKAGE

● ~~Incorporation of Licensee's Logo into the Course Toolbar.~~

- ~~**Incorporation of Licensee's Policy.** The Licensee's Policy is accessible throughout the Online Course by clicking an icon in the navigation bar at the top of the screen. Licensee's Policy automatically appears at the end of the Online Course. Licensed Users must review and acknowledge the Licensee's Policy. Licensee's Policy is printable.~~

~~The Online Course tracks not just completion of the training, but also receipt and acknowledgement of Licensee's Policy. The Online Course therefore acts as both a training and policy distribution tool.~~

~~Licensee provides its formatted policies (not to exceed two policy documents) as Microsoft Word, HTML, or RTF documents. If Licensee provides more than two policy documents, additional fees may apply. NAVEX Global performs minimal formatting to the policies and incorporates them into the Online Course. Licensee may also provide a logo to be included at the top of the Policy screen.~~

- ~~**Incorporation of Licensee's Logo and Custom Acknowledgement Statement into Certificate Screen.** The certificate at the end of the Online Course indicating the Licensed User's acknowledgement of both the training program and Licensee's Policy is customized to include Licensee's logo, and an acknowledgement statement specific to Licensee. Licensee provides an electronic version of the text to be included in the certificate and a logo for placement on the certificate screen.~~

- ~~**Questions / Contact Information / Report Potential Incident Icon.** The toolbar at the top of each screen in the Online Course includes an icon for Questions, Contact or "Report Potential Incident" information. When a Licensed User clicks this icon, s/he is given specific information about where to direct questions and report potential misconduct, including e-mail links if~~

applicable. This information automatically appears along with Licensee's policy at the end of the Online Course.

- Incorporation of County of Orange Name / Logo (in color scheme) into the Course Toolbar and each page of the course
- An audio message from a high-ranking County official welcoming employees to the course
- Incorporation of County of Orange Equal Employment Opportunity and Anti-Harassment Policies
- Incorporation of photos of County's worksites and employees[KS32]
- Custom Course Acknowledgement Statement and Completion Certificate with County of Orange name and logo
- Q & A feature / Contact Information / Points of contact for receiving complaints of discrimination, harassment and/or retaliation[KS33]
- Report Potential Incident Popups[KS34]

County policies shall be accessible throughout the online course by clicking an icon in the navigation bar at the top of the screen.

County employees must review and acknowledge County Policies. The online course tracks receipt and acknowledgment of County Policies.

Contractor's Customer Support surveys shall repeatedly demonstrate high levels of satisfaction across the board. Failure to demonstrate high levels of satisfaction may cause for breach of Contract.

KEY MILESTONES

County and Contractor Project Managers and other representatives will work and agree on the schedule / dates for the following:

- Kickoff Call / Meeting
- Course Customization Inputs
- Hosting and LMS Service Inputs
- Pre-Launch Internal Marketing Package
- Initial Course Delivery / Program Launch
- LMS Administrative Access
- Other Key Milestones / Deliverables as necessary

ATTACHMENT B

PAYMENT / COMPENSATION / LICENSE FEES

1. COST/COMPENSATION:

The County agrees to compensate the Contractor at the fixed rates as set forth below for services provided. Contractor agrees to accept the same as full compensation for performing all services and furnishing all staffing and materials called for, and for risks connected with the services as detailed in the agreement, and for performance by Contractor of all its duties and obligations hereunder.

The Contractor's fixed cost for services will include fees, expenses, travel, labor, materials, and all other costs required for Contractor's services (the Parties acknowledge no travel is associated with this engagement).

The fixed rate, as set forth herein shall be fixed for the term of the Contract. The fixed rate shall include all costs and expenses related to the performance of the ~~EEO-WPH5~~ Online Training services and work by the Contractor to meet the requirements set forth in the Scope of Work. Mileage, parking, telephone/fax expense, travel expenses, food, postage and incidental photocopies are not billable and will not be allowed.

2. LICENSE FEES:

ON-LINE TRAINING FOR 13,500 NON-SUPERVISORS

<u>NAME</u>	<u>QUANTITY</u>	<u>INITIAL FEE</u>	<u>ANNUAL FEE</u>
<u>Workplace Harassment 5</u>	<u>13,500</u>	<u>\$93,825.00</u>	
<u>Workplace Harassment 5 - Maintenance</u>	<u>13,500</u>		<u>\$17,145.00</u>
<u>Workplace Harassment 5 Standard Customization Package</u>	<u>1</u>	<u>\$1,500.00</u>	
<u>Workplace Harassment 5 Setup - NAVEX Hosted - Courseware (LMS Tracking)</u>	<u>1</u>	<u>\$5,000.00</u>	
	<u>SUB-TOTAL</u>	<u>0</u>	<u>0</u>

TOTALS

<u>YEAR ONE:</u>	<u>\$117,470.00</u>
<u>YEAR TWO:</u>	<u>\$17,145.00</u>
<u>YEAR THREE:</u>	<u>\$17,145.00</u>
<u>YEAR FOUR:</u>	<u>\$17,145.00</u>

Four Year Term Fixed Rate per Usage License

Non-Supervisory Employees \$3.13

Up to 13,500 cumulative course uses:

- ~~Preventing Workplace Harassment – CA Employee Edition~~

In Excess of cumulative total of 13,500 course uses \$9.00

Two Year Renewal Term

Non-Supervisory Employees \$3.13

Up to 13,500 cumulative course uses:

- ~~Preventing Workplace Harassment – CA Employee Edition~~

In Excess of cumulative total of 13,500 course uses \$9.00

LMS Services Fees:

- ~~LMS & Courseware Set-up (one time initial fee) \$ 5,000.00~~

Other Miscellaneous Course Fees:

- ~~Standard Customizations \$ 1,500.00~~
- ~~Course Update Package per two year cycle No Charge~~
- ~~Non-Standard Customizations (Links to DFEH; EEOC; JAN~~

and OC EEO Access Office) No Charge

3. PAYMENT SCHEDULE:

Pricing— Initial Two Year Term (13,500 course-uses)

License Fee	\$42,255.00
Additional License Fees (in excess of 13,500 course-uses)	4,500.00
Standard Customization Package	1,500.00
Hosting / Set-up Fee	5,000.00
Maintenance Fee	<u>34,290.00</u>
TOTAL	<u>\$87,545.00</u>

Payment One: Due thirty (30) days from date of NAVEX invoice issued upon signature

\$42,255	93,825.00	(License Fee)
750	1,500.00	(50% Standard Customization Fee)
5,000.00		(Hosting / Set-up Fee-one time)
<u>17,145.00</u>		(Maintenance Fee)
\$65,150.00	117,470.00	TOTAL

Payment Two: Due one year from execution of initial ~~two~~four-year Contract

\$17,145.00 (Maintenance Fee)

The County will be invoiced separately for any additional license fees purchase in excess of the cumulative course uses available during the license term.

Pricing— Renewal Contract Term (13,500 course-uses)

The following license fees are in addition to those under the “Initial Two Year Pricing” above and

~~apply only if the Contract is renewed and License Term is extended in accordance with the SOW:~~

License Fee	\$ 42,255.00
Additional License Fees (in excess of 13,500 course uses)	4,500.00
Maintenance Fee	<u>34,290.00</u>
TOTAL	<u>\$81,045.00</u>

Third Year Cost: ~~Due two years from execution of initial four-year Contract~~ ~~Due thirty (30)~~
~~days from date of NAVEX invoice~~

~~—\$42,255.00— (License Fee)~~
~~—750.00— (50% Standard Customization)~~
17,145.00 (Maintenance Fee)
~~—\$ 60,150.00— TOTAL~~

Fourth Year Cost: Due ~~one-three~~ years ~~from execution-upon-renewal~~ of Contract

\$ 17,145.00 (Maintenance Fee)

The County will be invoiced separately for any additional license fees purchase in excess of the cumulative course uses available during the license term.

4.3. PAYMENT TERMS:

Invoices are to be submitted per payment schedule to the address specified below. Contractor shall reference Contract number on invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by Human Resource Services and subject to routine processing requirements of the County.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Contract requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as

acceptance of any part of the goods or services.

Invoices are to be sent to:

Human Resource Services

333 W. Santa Ana Blvd., 2nd floor

Santa Ana, CA 92701

Attn: Janine Boiarsky

5.4. INVOICING INSTRUCTIONS:

The Contractor will provide an invoice on Contractor's letterhead for services rendered. Each invoice will have a number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address (if different from 1 above)
3. Name of County agency department – Human Resource Services
4. County Contract Number / Delivery Order Number
5. Service date(s) – Month of Service
6. Training Module Rate
7. Training Service ~~description~~ Name
8. Contractor's Federal I. D. number
9. Total

The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction. The County's Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment.