

## **Solicitation ITB-PRC-FY22-0102**

### **RSA Tokens, Licenses, and Support/Maintenance**

#### **Bid Designation: Public**



**County of Santa Clara**

## Bid ITB-PRC-FY22-0102

### RSA Tokens, Licenses, and Support/Maintenance

Bid Number **ITB-PRC-FY22-0102**  
 Bid Title **RSA Tokens, Licenses, and Support/Maintenance**

Bid Start Date **Oct 8, 2021 12:07:02 PM PDT**  
 Bid End Date **Oct 20, 2021 3:00:00 PM PDT**  
 Question & Answer  
 End Date **Oct 15, 2021 5:00:00 PM PDT**

Bid Contact **Christopher Eglesia**  
**Buyer I**  
**408-491-7489**  
**christopher.eglesia@prc.sccgov.org**

Bid Contact **Sabrina Teixeira**  
**Buyer II**  
**408-491-7467**  
**Sabrina.Teixeira@prc.sccgov.org**

Contract Duration **3 years**  
 Contract Renewal **1 annual renewal**  
 Prices Good for **30 days**  
 Pre-Bid Conference **Oct 13, 2021 9:30:00 AM PDT (Online)**  
**Attendance is optional**

Bid Comments The County of Santa Clara (the "County") is requesting bids from RSA Authorized Value Added Resellers (VARs) to provide RSA Tokens, Licenses, and Support/Maintenance or as specified in this Invitation to Bid (ITB). Bidder must be an authorized/licensed reseller and must maintain that title through the term of the agreement.  
 Bid prices should not include sales tax or any other government-imposed fees as the County will calculate the applicable taxes and fees upon award.

The three (3) Supplemental Declarations and bidders representation must be completed and submitted with the bid response.

Bidder must electronically submit in the PeriScope Holdings system these completed documents prior to the closing date and time for this ITB.

The lowest responsive and responsible Bidder will need to submit General Liability (G/L) and Additional Insured Endorsement (AIE) certificates in compliance with the County Insurance Requirements (exhibit of which is attached) three (3) days after County's notification.

This is an Invitation to Bid, which is an offer and acceptance. Bidders who take exception to any of the terms and conditions and corresponding exhibits will be deemed non-responsive and their bid will not be considered.

#### Item Response Form

Item **ITB-PRC-FY22-0102--01-01 - RSA Authentication Manager Enterprise Edition - (v. 8.0)**

Quantity **25 each**

Unit Price

Delivery Location **County of Santa Clara**  
No Location Specified

**Qty 25**

**Description**  
software

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Item **ITB-PRC-FY22-0102--01-02 - RSA Enhanced Support - Technical support for RSA Authentication**

Quantity **25 each**

Unit Price

Delivery Location **County of Santa Clara**  
No Location Specified

**Qty 25**

**Description**  
support

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Item **ITB-PRC-FY22-0102--01-03 - RSA Authentication Manager RBA/ODA - (v. 8.0)**

Quantity **25 each**

Unit Price

Delivery Location **County of Santa Clara**  
No Location Specified

**Qty 25**

**Description**  
Software

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Item **ITB-PRC-FY22-0102--01-04 - RSA SecurID SID700 hardware token**

Quantity **5 each**

Unit Price

Delivery Location **County of Santa Clara**  
No Location Specified

**Qty 5**

**Description**  
Hardware

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Item **ITB-PRC-FY22-0102--01-05 - RSA SecurID SID700 hardware token**

Quantity **10 each**

Unit Price

Delivery Location **County of Santa Clara**

No Location Specified

**Qty** 10

**Description**  
Hardware

Item **ITB-PRC-FY22-0102--01-06 - RSA SecurID SID700 hardware token**

Quantity **25 each**

Unit Price

Delivery Location **County of Santa Clara**

No Location Specified

**Qty** 25

**Description**  
Hardware

Item **ITB-PRC-FY22-0102--01-07 - RSA SecurID SID700 hardware token**

Quantity **50 each**

Unit Price

Delivery Location **County of Santa Clara**

No Location Specified

**Qty** 50

**Description**  
Hardware

Item **ITB-PRC-FY22-0102--01-08 - RSA SecurID SID700 hardware token**

Quantity **100 each**

Unit Price

Delivery Location **County of Santa Clara**

No Location Specified

**Qty** 100

**Description**  
Hardware

Item **ITB-PRC-FY22-0102--01-09 - RSA SecurID SID700 hardware token**

Quantity **250 each**

Unit Price

Delivery Location **County of Santa Clara**

No Location Specified

**Qty** 250

**Description**  
Hardware

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Item **ITB-PRC-FY22-0102--01-10 - RSA SecurID SID700 hardware token**  
 Quantity **750 each**  
 Unit Price   
 Delivery Location **County of Santa Clara**  
No Location Specified  
  
**Qty 750**

**Description**  
Hardware

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Item **ITB-PRC-FY22-0102--01-11 - RSA SecurID SID700 hardware token**  
 Quantity **1500 each**  
 Unit Price   
 Delivery Location **County of Santa Clara**  
No Location Specified  
  
**Qty 1500**

**Description**  
Hardware

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Item **ITB-PRC-FY22-0102--01-12 - RSA SecurID SID700 hardware token**  
 Quantity **2500 each**  
 Unit Price   
 Delivery Location **County of Santa Clara**  
No Location Specified  
  
**Qty 2500**

**Description**  
Hardware

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Item **ITB-PRC-FY22-0102--01-13 - RSA SecurID SID700 hardware token**  
 Quantity **5000 each**  
 Unit Price   
 Delivery Location **County of Santa Clara**  
No Location Specified  
  
**Qty 5000**

**Description**  
Hardware

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Item **ITB-PRC-FY22-0102--01-14 - RSA SecurID Software Token Seeds (SID820)**  
 Quantity **250 each**

Unit Price

Delivery Location **County of Santa Clara**  
No Location Specified

**Qty** 250

**Description**  
Software

Item **ITB-PRC-FY22-0102--01-15 - RSA SecurID Software Token Seeds (SID820)**

Quantity **750 each**

Unit Price

Delivery Location **County of Santa Clara**  
No Location Specified

**Qty** 750

**Description**  
Software

Item **ITB-PRC-FY22-0102--01-16 - RSA SecurID Software Token Seeds (SID820)**

Quantity **1500 each**

Unit Price

Delivery Location **County of Santa Clara**  
No Location Specified

**Qty** 1500

**Description**  
Software

Item **ITB-PRC-FY22-0102--01-17 - RSA SecurID Software Token Seeds (SID820)**

Quantity **2500 each**

Unit Price

Delivery Location **County of Santa Clara**  
No Location Specified

**Qty** 2500

**Description**  
Software

Item **ITB-PRC-FY22-0102--01-18 - RSA Authentication Manager RBA/ODA - (v. 8.0)**

Quantity **100 each**

Unit Price

Delivery Location **County of Santa Clara**  
No Location Specified

**Qty** 100

**Description**  
Software

**Description**  
Software

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Item **ITB-PRC-FY22-0102--01-19 - RSA Authentication Manager RBA/ODA - (v. 8.0)**  
 Quantity **150 each**  
 Unit Price   
 Delivery Location **County of Santa Clara**  
No Location Specified  
  
**Qty 150**

**Description**  
Software

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Item **ITB-PRC-FY22-0102--01-20 - RSA Authentication Manager RBA/ODA - (v. 8.0)**  
 Quantity **250 each**  
 Unit Price   
 Delivery Location **County of Santa Clara**  
No Location Specified  
  
**Qty 250**

**Description**  
Software

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Item **ITB-PRC-FY22-0102--01-21 - RSA Authentication Manager RBA/ODA - (v. 8.0)**  
 Quantity **500 each**  
 Unit Price   
 Delivery Location **County of Santa Clara**  
No Location Specified  
  
**Qty 500**

**Description**  
Software

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Item **ITB-PRC-FY22-0102--01-22 - RSA Authentication Manager RBA/ODA - (v. 8.0)**  
 Quantity **750 each**  
 Unit Price   
 Delivery Location **County of Santa Clara**  
No Location Specified  
  
**Qty 750**

**Description**  
Software

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Item **ITB-PRC-FY22-0102--01-23 - RSA Authentication Manager RBA/ODA - (v. 8.0)**  
 Quantity **1500 each**

Unit Price

Delivery Location **County of Santa Clara**  
No Location Specified

**Qty** 1500

**Description**  
Software

Item **ITB-PRC-FY22-0102--01-24 - RSA Authentication Manager RBA/ODA - (v. 8.0)**

Quantity **2500 each**

Unit Price

Delivery Location **County of Santa Clara**  
No Location Specified

**Qty** 2500

**Description**  
software

Item **ITB-PRC-FY22-0102--01-25 - RSA Authentication Manager RBA/ODA - (v. 8.0)**

Quantity **5000 each**

Unit Price

Delivery Location **County of Santa Clara**  
No Location Specified

**Qty** 5000

**Description**  
software

Item **ITB-PRC-FY22-0102--01-26 - RSA Authentication Manager RBA/ODA - (v. 8.0)**

Quantity **10000 each**

Unit Price

Delivery Location **County of Santa Clara**  
No Location Specified

**Qty** 10000

**Description**  
software

Item **ITB-PRC-FY22-0102--01-27 - RSA Authentication Manager RBA/ODA - (v. 8.0)**

Quantity **50000 each**

Unit Price

Delivery Location **County of Santa Clara**  
No Location Specified

**Qty** 50000



**Description**  
software

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Item **ITB-PRC-FY22-0102--01-28 - RSA Enhanced Support - Technical support for RSA Authentication**  
 Quantity **100 each**  
 Unit Price   
 Delivery Location **County of Santa Clara**  
No Location Specified  
  
**Qty 100**

**Description**  
support

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Item **ITB-PRC-FY22-0102--01-29 - RSA Enhanced Support - Technical support for RSA Authentication**  
 Quantity **150 each**  
 Unit Price   
 Delivery Location **County of Santa Clara**  
No Location Specified  
  
**Qty 150**

**Description**  
support

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Item **ITB-PRC-FY22-0102--01-30 - RSA Enhanced Support - Technical support for RSA Authentication**  
 Quantity **250 each**  
 Unit Price   
 Delivery Location **County of Santa Clara**  
No Location Specified  
  
**Qty 250**

**Description**  
support

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Item **ITB-PRC-FY22-0102--01-31 - RSA Enhanced Support - Technical support for RSA Authentication**  
 Quantity **500 each**  
 Unit Price   
 Delivery Location **County of Santa Clara**  
No Location Specified  
  
**Qty 500**

**Description**  
support

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Item **ITB-PRC-FY22-0102--01-32 - RSA Enhanced Support - Technical support for RSA Authentication**  
 Quantity **750 each**

Unit Price

Delivery Location **County of Santa Clara**  
No Location Specified

**Qty** 750

**Description**  
support

Item **ITB-PRC-FY22-0102--01-33 - RSA Enhanced Support - Technical support for RSA Authentication**

Quantity **1500 each**

Unit Price

Delivery Location **County of Santa Clara**  
No Location Specified

**Qty** 1500

**Description**  
support

Item **ITB-PRC-FY22-0102--01-34 - RSA Enhanced Support - Technical support for RSA Authentication**

Quantity **2500 each**

Unit Price

Delivery Location **County of Santa Clara**  
No Location Specified

**Qty** 2500

**Description**  
support

Item **ITB-PRC-FY22-0102--01-35 - RSA Enhanced Support - Technical support for RSA Authentication**

Quantity **5000 each**

Unit Price

Delivery Location **County of Santa Clara**  
No Location Specified

**Qty** 5000

**Description**  
support

Item **ITB-PRC-FY22-0102--01-36 - RSA Enhanced Support - Technical support for RSA Authentication**

Quantity **10000 each**

Unit Price

Delivery Location **County of Santa Clara**  
No Location Specified

**Qty** 10000

**Description**  
support

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Item **ITB-PRC-FY22-0102--01-37 - RSA Authentication Manager Enterprise Edition - (v. 8.0)**  
 Quantity **100 each**  
 Unit Price   
 Delivery Location **County of Santa Clara**  
No Location Specified  
  
**Qty** 100

**Description**  
software

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Item **ITB-PRC-FY22-0102--01-38 - RSA Authentication Manager Enterprise Edition - (v. 8.0)**  
 Quantity **150 each**  
 Unit Price   
 Delivery Location **County of Santa Clara**  
No Location Specified  
  
**Qty** 150

**Description**  
software

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Item **ITB-PRC-FY22-0102--01-39 - RSA Authentication Manager Enterprise Edition - (v. 8.0)**  
 Quantity **250 each**  
 Unit Price   
 Delivery Location **County of Santa Clara**  
No Location Specified  
  
**Qty** 250

**Description**  
software

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Item **ITB-PRC-FY22-0102--01-40 - RSA Authentication Manager Enterprise Edition - (v. 8.0)**  
 Quantity **500 each**  
 Unit Price   
 Delivery Location **County of Santa Clara**  
No Location Specified  
  
**Qty** 500

**Description**  
software

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Item **ITB-PRC-FY22-0102--01-41 - RSA Authentication Manager Enterprise Edition - (v. 8.0)**  
 Quantity **750 each**

Unit Price

Delivery Location **County of Santa Clara**  
No Location Specified

**Qty** 750

**Description**  
software

Item **ITB-PRC-FY22-0102--01-42 - RSA Authentication Manager Enterprise Edition - (v. 8.0)**

Quantity **1500 each**

Unit Price

Delivery Location **County of Santa Clara**  
No Location Specified

**Qty** 1500

**Description**  
software

Item **ITB-PRC-FY22-0102--01-43 - RSA Authentication Manager Enterprise Edition - (v. 8.0)**

Quantity **2500 each**

Unit Price

Delivery Location **County of Santa Clara**  
No Location Specified

**Qty** 2500

**Description**  
software

Item **ITB-PRC-FY22-0102--01-44 - RSA Enhanced Support - Technical support for RSA Authentication**

Quantity **5000 each**

Unit Price

Delivery Location **County of Santa Clara**  
No Location Specified

**Qty** 5000

**Description**  
software

Item **ITB-PRC-FY22-0102--01-45 - RSA Authentication Manager Enterprise Edition - (v. 8.0)**

Quantity **10000 each**

Unit Price

Delivery Location **County of Santa Clara**  
No Location Specified

**Qty** 10000

**Description**  
software

Item **ITB-PRC-FY22-0102--01-46 - Non-Collusion Declaration**

Quantity **1 each**

Prices are not requested for this item.

Delivery Location **County of Santa Clara**

No Location Specified

**Qty 1**

**Description**

Download the Non-Collusion Declaration document from the Documents tab, complete and upload by clicking on the "Place Offer" button within the corresponding line item.

Item **ITB-PRC-FY22-0102--01-47 - Declaration of Local Business**

Quantity **1 each**

Prices are not requested for this item.

Delivery Location **County of Santa Clara**

No Location Specified

**Qty 1**

**Description**

Download the Declaration of Local Business document from the Documents tab, complete and upload by clicking on the "Place Offer" button within the corresponding line item.

Item **ITB-PRC-FY22-0102--01-48 - Declaration of Compliance with Wage Theft Prevention**

Quantity **1 each**

Prices are not requested for this item.

Delivery Location **County of Santa Clara**

No Location Specified

**Qty 1**

**Description**

Download the Declaration of Compliance with Wage Theft Prevention document from the Documents tab, complete and upload by clicking on the "Place Offer" button within the corresponding line item.

### DECLARATION OF COMPLIANCE WITH WAGE THEFT PREVENTION POLICY

The County of Santa Clara does not tolerate wage theft. Accordingly, Santa Clara County Board of Supervisors' Policy Manual, Section 5.5.5.4, includes the following:

#### Wage Theft Prevention

It is the policy of the County that all parties contracting with the County must comply with all applicable federal, state, and local wage and hour laws, including, but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any Minimum Wage Ordinance enacted by the County or any city within the County of Santa Clara. A potential contractor that has submitted a formal or informal bid to provide goods and/or services to the County may be disqualified if the potential contractor has been found, by a court or by final administrative action of an investigatory government agency, to have violated applicable wage and hour laws in the five years prior to the submission of a bid to provide goods and/or services. A current contractor found by a court or by final administrative action of an investigatory government agency to have violated applicable wage and hour laws, in the five years prior to or during the term of the contract with the County, may be in material breach of its contract with the County if the violation is not fully disclosed and/or satisfied per County guidelines and contract requirements. Such breach may serve as a basis for contract termination and/or any other remedies available under law, including a stipulated remediation plan.

Please complete the certification below.

- Proposer has no violations to disclose pursuant to Board Policy Manual § 5.5.5.4.
- Proposer has been found by a court or final administrative action of an investigatory government agency to have violated federal, state, or local wage and hour laws within the last five (5) years.
- Proposer has included in the proposal response the following for each violation: (1) a copy of the court order and judgment and/or final administrative decision; and (2) documents demonstrating either that the order/judgment has been satisfied, or, if the order/judgment has not been fully satisfied, a written and signed description of proposer's efforts to date to satisfy the order/judgment.

The undersigned declares that he or she is an official/agent of responding firm or individual and is empowered to represent, bind, and execute contracts on behalf of the firm or individual.

The undersigned declares under penalty of perjury, under the laws of the State of California, that all statements in this Exhibit and response are true and correct, with full knowledge that all statements are subject to investigation and that any incomplete, unclear, false or dishonest response may be grounds for denial or revocation of the accompanying bid or proposal and may result in being barred from doing business with Santa Clara County as well as additional legal consequences.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Company Address

### DECLARATION OF LOCAL BUSINESS

Santa Clara County gives local businesses a preference in formal solicitations of goods and services as set forth in the Board Policy, Section 5.6.5.2. The local preference policy may only be applied based on the entity submitting a bid or proposal and not a subcontractor or business partner. A bidder or proposer has the option of qualifying for the preference by self-declaring its qualification as a "Local Business", which is a lawful business with a physical address and meaningful "production capability" located within the boundary of the County of Santa Clara. The term "production capability" means sales, marketing, manufacturing, servicing, provision of services, or research and development capability that substantially and directly enhances the firm's or bidder's ability to perform the proposed contract. Post Office box numbers, residential addresses, a local sales office without any support and/or a local subcontractor hired by the contractor may not be used as the sole basis for establishing status as a "Local Business."

All information submitted is subject to investigation, as well as to disclosure to third parties under the California Public Records Act. Incomplete, unclear, or incomprehensible responses to the following will result in the bid or proposal not being considered for application of Santa Clara County's local preference policy. False or dishonest responses will result in rejection of the bid or proposal and curtail the firm or individual's ability to conduct business with the County in the future. It may also result in legal action.

Business Name: _____	
Street: _____	
City/State: _____	Zip: _____

I am declaring qualification as a local business as defined in County of Santa Clara Board Policy, Section 5.6.5.2. and applying for the local preference. The address provided is that of the business with meaningful "production capability" which is located within the boundary of the County of Santa Clara. Additional physical addresses in Santa Clara County are provided as an attachment.

My Business Organization is: (Check One)

- Individual Proprietorship       Corporation
- Partnership                       Other

**If this Policy does not apply, please check here:**

The undersigned declares that he or she is an official/agent of responding firm or individual and is empowered to represent, bind, and execute contracts on behalf of the firm or individual.

Name - Signature	Name - Print
Company	Date

**BIDDER'S REPRESENTATIONS**

Bidder understands, agrees, and warrants:

1. That Bidder has carefully read and fully understands the information that was provided by the County to serve as the basis for submission of this bid;
2. That Bidder has the capability to successfully undertake and complete the responsibilities and obligations of the bid being submitted;
3. That the bid constitutes an offer that shall be firm and irrevocable for 90 days from the deadline for submission offers;
4. That acceptance by County of one or more bids/offers shall create a binding contract obligating offeror(s) whose offer is accepted to perform as well as creating liability for non-performance. Acceptance by County of one or more offers shall not constitute termination or revocation of the remainder of the offers;
5. That all information contained in the bid is true and correct to the best of Bidder's knowledge;
6. That Bidder has electronically submitted a non-collusion affidavit and accepted the terms associated with the submission of the affidavit;
7. That Bidder did not receive unauthorized information from any County staff or consultant during the bid period except as provided for in the ITB package, addenda thereto, or the pre-bid conference, if applicable;
8. That by submission of this electronically submitted bid, the Bidder acknowledges that the County has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by Bidder, and Bidder hereby grants the County permission to make said inquiries, and to provide any and all requested documentation in a timely manner;
9. That Bidder offers and agrees to furnish the items specified in the ITB in accordance with the specifications, instructions, terms, and conditions stated herein. Any additional or different terms or qualifications sent by bidder, including, without limitation, in mailings, attached to invoices or with any items shipped, shall not become part of the contract between the parties. County's acceptance of contractor's offer is expressly made conditional on this statement;
10. That Bidder is solely responsible for the preparation and submission of its response electronically in BidSync and for ensuring that its response is complete and submitted timely;
11. That Bidder has investigated all aspects of the ITB including all addenda; is aware of the applicable facts pertaining to the ITB process, its procedures and requirements; has read and understands the ITB; and that no request for modification of the bid shall be considered after the closing date and time for the ITB on the grounds that the Bidder was not fully informed as to any fact or condition;
12. That Bidder shall only submit its response through BidSync and not submit responses via any other mechanism including, but not limited to, post, courier, fax, e-mail, or orally;
13. That the ITB will not be automatically cancelled because of difficulties experienced by a Bidder while attempting to participate in the ITB through BidSync;
14. That Bidder shall not engage in or participate in any unethical behavior;
15. That Bidder is solely responsible for ensuring that it posts information in BidSync in a secure manner and is solely responsible for any breach of its information;



- 16. That if there is a conflict between the information contained in the ITB and any BidSync tutorials or help materials, the information contained in the ITB shall govern the ITB process; and
- 17. That by electronically submitting the Bid Form in response to this ITB, Bidder is accepting all the terms and conditions contained in the Terms and Conditions Exhibit and the Insurance requirements set forth in the Insurance Exhibit in this ITB and Bidder understands that taking exception to any of the terms contained in those Exhibits will be deemed to have submitted a non-responsive bid; and the bid will be eliminated from consideration.

No Bid shall be accepted which has not been signed in the appropriate space below.

By signing below, the submission of a bid shall be deemed a representation and certification by the Bidder that it has investigated all aspects of the ITB, that it is aware of the applicable facts pertaining to the ITB process, its procedures and requirements, and that it has read and understands the ITB. No request for modification of the bid shall be considered after its submission on the grounds that the Bidder was not fully informed as to any fact or condition.

Bid No.: \_\_\_\_\_ Bid Title: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Email: \_\_\_\_\_

Supplier Name: \_\_\_\_\_

Address: \_\_\_\_\_

### NON-COLLUSION DECLARATION

I, \_\_\_\_\_ am the \_\_\_\_\_  
(Print Name) (Position/Title)

of \_\_\_\_\_  
(Name of Company)

the party making the foregoing proposal that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham bid; and has not directly or indirectly colluded, conspired, connived, or agreed with any proposer or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the proposer has not in any manner directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the proposer or any other proposer, or to fix any overhead, profit, or cost element of the bid price, or of that of any other proposer, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the proposer has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

I declare under penalty of perjury under the Laws of the State of California that the foregoing is true and correct:

COMPANY NAME: \_\_\_\_\_

AUTHORIZED SIGNATURE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

DATE: \_\_\_\_\_

## INSTRUCTIONS TO BIDDERS

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**THIS INVITATION TO BID REQUIRES ALL BIDS TO BE SUBMITTED ELECTRONICALLY THROUGH PERISCOPE. NO PAPER, EMAIL, FAX OR OTHER SUBMISSIONS WILL BE ACCEPTED.**

The County is requesting bids from prospective suppliers for the products and/or services as specified in this Invitation to Bid (ITB).

All bids are secure and may not be accessed by the County until the ITB closing date and time indicated in this ITB. It is the sole responsibility of the Bidder to ensure its bid is submitted before the closing date and time. The County is not responsible for any late or incomplete submissions due to any technical issues that may be encountered in the Periscope (formerly BidSync) system. Website is PeriscopeHoldings.com (formerly BidSync.com).

The following are the requirements and procedures Bidders are required to follow in submitting a bid to the County.

### 1. **TERMINOLOGY:**

The following are definitions of terms used in the ITB:

- “Bidder” means the entity, offeror, supplier, person, firm, or corporation submitting a bid.
- “Contractor” means the individual or firm awarded a purchase order or contract as a result of its bid.
- “County” means County of Santa Clara.
- “ITB” means Invitation to Bid and refers to this particular ITB.
- “Time” stated as number of days shall mean “calendar” days.

### 2. **PREPARATION OF BID:**

- 2.1 All bid responses for this ITB must be submitted electronically through the Periscope system, including required attachments, as applicable.
- 2.2 Time of delivery is a part of the bid and must be adhered to. Bidder shall respond to the delivery question set forth in the ITB.
- 2.3 Bid must be complete. All questions and requested submittals required by the ITB must be answered and/or provided.
- 2.4 All bids must have the Bidder’s name and must be submitted by a responsible officer or employee with the authority to bind the Bidder to contractual obligations. Obligations assumed by such a submission must be fulfilled.

### 3. **COSTS ASSOCIATED WITH ITB:**

Bidder shall be solely responsible for all costs associated with the preparation and submittal of a response to this ITB.

### 4. **QUESTIONS AND ADDENDA:**

- 4.1 Bidder shall post questions related to the ITB within Periscope prior to the closing of the ITB. The County will not respond to any other method of questions (email, phone, etc.) while the ITB is still open. If a Bidder has a question after the closing of the ITB, Bidder is required to send an email to the Point of Contact for this ITB.
- 4.2 The County Procurement Department will respond to inquiries deemed necessary and relevant to responding to the ITB in a written Addendum posted within Periscope.
- 4.3 The County will post ITB and any addenda in Periscope. Bidders are responsible for checking [www.PeriscopeHoldings.com](http://www.PeriscopeHoldings.com) for postings.
- 4.4 The County is not liable for verbal responses, interpretations or representations.

- 4.5 The County makes no guarantee that it will answer any questions submitted by a Bidder before the ITB closing date and time.
- 4.6 The County reserves the right to extend any deadlines, including the deadline for questions, by posting an addendum to the ITB in Periscope, if in the best interest of the County. Bidders are responsible for checking Periscope for any such addenda.

**5. SUBMISSION OF BID:**

- 5.1 Any bid not submitted electronically through Periscope, including any required attachments, shall be considered non-responsive and will be rejected.
- 5.2 Bids must be submitted electronically in [www.PeriscopeHoldings.com](http://www.PeriscopeHoldings.com) in accordance with the County requirements. Bids submitted in any other form, including, but not limited to, the following forms, will not be accepted: Hard copy, oral, telephone, or facsimile.
- 5.3 In order for your bid to be considered, you must electronically submit your response to this ITB prior to the closing time and date of this ITB. The County will not accept any bid submitted after the closing date and time of this ITB.
- 5.4 All information submitted is subject to investigation, as well as to disclosure to third parties under the California Public Records Act.
- 5.5 If the County is unable to open a file due to a virus or because the file has been corrupted, the bid response may be considered incomplete and disqualified from further consideration.
- 5.6 The County has the capability of viewing documents submitted in the following formats: Microsoft Word, Microsoft Excel, or portable document format file (PDF).
- 5.7 Bidder should allow adequate time to submit its bid electronically. Submission of a bid response may not be instantaneous and may be affected by several events, such as temporarily losing connection to the internet or incorrect format. Bidders are solely responsible for ensuring their bids are completed and submitted electronically in [www.PeriscopeHoldings.com](http://www.PeriscopeHoldings.com) prior to the closing date and time for this ITB.
- 5.8 If this solicitation is an aggregate ("All or None") Bid, Bidder must complete all bid line items prior to submission of the Bid Form. If Bidder fails to complete a line item, Periscope will populate the line item with zero. The value of zero will be disregarded and the bid response will be deemed non-responsive and the Bidder will be eliminated. For all other types of bids, if a Bidder fails to complete a line item, the County will disregard the value of zero for that line item and will evaluate the completed line items of the bid as identified in the ITB.

**6. MULTIPLE BIDS:**

Only one bid will be accepted from any one Bidder.

**7. PUBLIC BID OPENING:**

There will be a public bid opening at the date and time specified in the ITB as per the Schedule of Events. For those unable to attend in person, a teleconference line will be available. The County does not guarantee an error free connection so a Bidder's choice to attend using a teleconference line is at Bidder's risk. See the Schedule of Events section of the ITB for the teleconference information.

**8. LATE RESPONSES:**

The County will not accept late responses. The County is not responsible for any late or incomplete submissions due to any technical issues that may be encountered in Periscope.

**9. ACCEPTANCE OF BID:**

The County may award a contract to a Bidder at any time within 90 days after the ITB closing date and time. The bid constitutes an offer that shall be firm and irrevocable for 90 days from the deadline for submission offers. If there is a delay in the award beyond the bidders' acceptance period, all bidders can be asked, before expiration of their bids, to

extend the bid acceptance period in order to avoid the need for re-solicitation, if it is in the County's best interest.

**10. NO WAIVER:**

It shall not constitute a waiver of any requirement of the ITB by the County if the County does not address errors or omissions in a bid or acceptance of a bid.

**11. WITHDRAWAL OR MODIFICATION OF BID:**

Bidders may modify or withdraw their bids in Periscope until the ITB closing date and time. If Bidders have questions related to the ITB process they are required to submit it through [www.PeriscopeHoldings.com](http://www.PeriscopeHoldings.com). For technical questions, Bidders should contact [PeriscopeHoldings.com](http://PeriscopeHoldings.com) at 800-9909339(United States).

In the event a Bidder wants to withdraw its bid from consideration after the ITB closing date and time, the Bidder must submit a written request which includes the reason for the withdrawal request to the Procurement Officer identified as the Point of Contact. The Procurement Officer will determine whether the withdrawal of the bid is appropriate.

**12. GROUNDS FOR REJECTION:**

Any materially false, incomplete or otherwise unresponsive statements in or in connection with a bid or any documentation or other information supplied to the County by a Bidder shall be cause for rejection by the County of the bid or disqualification of the Bidder at the County's sole discretion. Any judgment as to the significance of any falsity, incompleteness or unresponsiveness shall be made at the sole discretion of the County, and its judgment shall be final.

**13. RESERVATION:**

The County reserves the right to do any of the following at any time if it is in the best interest of the County:

- 13.1 To reject any and all bids;
- 13.2 Waive or correct any minor or inadvertent defect, irregularity, informality or technical error in any bid;
- 13.3 Require bidder to submit breakdown of cost or pricing data provided in bid;
- 13.4 Award based on an aggregate ("all-or-none") basis, by separate line items, by grouped items, or by lots as specified in the ITB document. In the absence of identification of award basis, "all or none" will be the default;
- 13.5 Terminate this ITB or any portion of the ITB process and issue a new ITB any time thereafter;
- 13.6 Extend any or all deadlines in the ITB, including the deadline for accepting bids;
- 13.7 Disqualify any Bidder on the basis of any real or apparent conflict of interest or evidence of collusion that is disclosed by the bid or other data available to the County. Such disqualification is at the sole discretion of the County and its decision shall be final;
- 13.8 Reject the bid of any Bidder that is in breach of or in default under any other agreement with the County;
- 13.9 Reject any bid deemed by the County to be non-responsive and/or conditional;
- 13.10 Make such investigations as deemed necessary to determine if a Bidder is capable of meeting contract requirements. The determination of the County as to the Bidder's ability to perform is at the sole discretion of the County and its decision shall be final;
- 13.11 Determine whether a bid meets, exceeds or does not meet County's specification;
- 13.12 To waive or correct any minor or inadvertent defect, irregularity or technical error in the ITB,
- 13.13 To amend, modify, or withdraw the ITB, or the content or format of the ITB;
- 13.14 To reject, eliminate or disqualify a Bidder for any false, or misleading information posted on or submitted in the ITB; and
- 13.15 To deem a bidder as non-responsible.

**14. ITB EVALUATION CRITERIA:**

If an award is made, it will be made to the lowest responsive and responsible Bidder.

County reserves the right to negotiate with the lowest responsive and responsible Bidder in order to obtain best pricing for the County.

A Bidder will be deemed to be responsive if it has submitted a bid that conforms in all material respects to the requirements for this ITB.

A Bidder will be deemed to be responsible if the Bidder:

- 14.1 has the ability, financial capacity, business experience, personnel, resources, and other necessary skills to provide the goods in accordance with the bid specifications;
- 14.2 has the ability to provide the goods promptly or within the time specified without delay;
- 14.3 has equipment, facilities, and resources of such capacity and location to enable it to provide the goods;
- 14.4 is able to provide future maintenance, repair, parts and service for goods, if required by the bid specifications;
- 14.5 has a record of performance and integrity, including a record of satisfactory or better performance under prior contracts with the County and other purchasers;
- 14.6 has complied with all applicable laws, regulations, guidelines and orders governing prior or existing contracts; and
- 14.7 has complied with all applicable Federal, State, and local wage and hour laws and has satisfied any final judgments, decisions, or orders issued by a court or investigatory government agency finding that Bidder has violated any applicable wage and hour laws. If a Bidder has not satisfied any such judgments, decisions, or orders, the Bidder will not be deemed responsible.

**15. PRICING:**

Prices should be stated in the units specified. If there is a discrepancy between the unit price and total or extended price, the unit price shall prevail.

**16. PROMPT PAYMENT DISCOUNT:**

Prompt payment discounts shall not be considered in the evaluation of bids. However, any prompt payment discount offered may form a part of the award and may be taken by the County if payment is made within the discount period specified by the Bidder. Any prompt payment discount offered may be noted in the Bid in Periscope.

**17. FOB POINT:**

Unless otherwise specified in the I T B, FOB Point shall be Destination (freight prepaid and allowed).

**18. BRAND NAME OR APPROVED EQUAL:**

Brand names and model numbers may be specified in the ITB for reference and descriptive purposes. Unless otherwise indicated, bids for equal items will be considered, provided the Bidder completes its validation of the specifications on the form provided and provides a detailed description of the specifications of the product being offered, feature by feature. Bidder shall not solely provide the County with literature such as marketing materials to meet this requirement of validating specifications.

Determination of whether an item is equal to the items listed and/or meets the County's specifications is at the sole discretion of the County and its decision shall be final.

**19. INTENT OF AWARD:**

If an award is made, the County reserves the right to make an award to one or more Bidders.

**20. LOCAL PREFERENCE (IF APPLICABLE):**

In accordance with section 5.6.5.2 of Chapter 5 of the Board of Supervisors' Policy Manual, in the formal solicitation of goods or services, the County shall give Local Businesses the preference described below.

"Local Business" means a lawful business with a physical address and meaningful "production capability" located within the boundary of the County of Santa Clara.

The term "production capability" means sales, marketing, manufacturing, servicing, provision of services, or research and development capability that substantially and directly enhances the firm's or bidder's ability to perform the proposed contract. Post Office box numbers, residential addresses, a local sales office without any support and/or a local subcontractor hired by the contractor may not be used as the sole basis for establishing status as a "Local Business."

In the procurement of goods or services using an Invitation to Bid or another solicitation method in which price is the determining factor for award of the contract, five percent (5%) shall be subtracted from a bid submitted by a responsive and responsible Local Business in determining the lowest responsive responsible bidder. If application of the 5% results in a Local Business bid being lower than the non-local business bid, the contract award shall be made to the Local Business at the Local Business' original bid price. If after applying the 5% discount, two or more competing vendors have bid the same price, local businesses shall be given preference.

This Local Business preference shall not apply to the following:

- 20.1 Public works contracts;
- 20.2 Where such a preference is precluded by local, state or federal law or regulation;
- 20.3 Contracts funded in whole or in part by a donation or gift to the County where the special conditions attached to the donation or gift prohibits or conflicts with this preference policy. The donation or gift must be approved or accepted by the Board in accordance with County policy; or
- 20.4 Contracts exempt from solicitation requirements under an emergency condition in accordance with Board policy, state law and/or the County of Santa Clara Ordinance Code.

**In order to be considered for Local Preference, Bidder must complete and submit the Declaration of Local Business, which is located in the Appendices section of the ITB.**

**21. TIE BIDS:**

A tie bid exists when two or more responsive and responsible Bidders submit bids with identical prices. The contract shall be awarded based the flip of a coin in the presence of at least one witness or all bids may be rejected and a new ITB issued.

If Local Preference is applicable and a tie bid exists after applying the 5% Local Business Preference, the contract shall be awarded to the Local Business.

**22. WAGE THEFT PREVENTION POLICY (IF APPLICABLE):**

It is the policy of the County that all parties contracting with the County must comply with all applicable federal, state, and local wage and hour laws, including, but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any Minimum Wage Ordinance enacted by the County or any city within the County of Santa Clara. A potential

contractor that has submitted a formal or informal bid to provide goods and/or services to the County may be disqualified if the potential contractor has been found, by a court or by final administrative action of an investigatory government agency, to have violated applicable wage and hour laws in the five years prior to the submission of a bid to provide goods and/or services. A current contractor found by a court or by final administrative action of an investigatory government agency to have violated applicable wage and hour laws, in the five years prior to or during the term of the contract with the County, may be in material breach of its contract with the County if the violation is not fully disclosed and/or satisfied per County guidelines and contract requirements. Such breach may serve as a basis for contract termination and/or any other remedies available under law, including a stipulated remediation plan.

**23. POINT OF CONTACT**

The Procurement Officer who shall act as the Point of Contact for this ITB is identified under the Point of Contact section of the ITB. If necessary, Bidders can send an email to the Procurement Officer. Bidders should not contact other County employees, County departments or agencies regarding this ITB. For technical questions, Bidders are required to call PeriscopeHoldings.com at 1800-990-9339 (United States).

**24. USE OF THE ITB FORMS:**

The ITB is being made available by electronic means. As part of the ITB, Bidder shall download, complete and upload certain documents and/or other requested forms. Bidder acknowledges and accepts full responsibility to ensure that no changes are made to these documents except for the sections they are required to complete. In the event of a conflict between the version of the forms submitted by the Bidder and the version maintained by the Procurement Department, the version maintained by the Procurement Department will govern.

**25. PRE-BID CONFERENCE**

The County may schedule an optional or mandatory pre-bid conference for this ITB. The date, time, and location of the pre-bid conference will be indicated in the ITB.

**Optional Pre-Bid Conference**

Attendance at an optional pre-bid conference is strongly recommended but is not required. For those unable to attend in person, a teleconference line will be available. The County does not guarantee an error free connection so a Bidder's choice to attend using a teleconference line is at Bidder's risk. See the ITB for the teleconference information.

**Mandatory Pre-Bid Conference**

If a mandatory pre-bid conference is required, Bidders must attend in order for their bid to be considered. A bid will be deemed non-responsive if a Bidder fails to attend a mandatory pre-bid conference and the County shall reject the bid response.

**26. ACCESS OF RESULTING CONTRACT**

The County highly encourages and permits the use of any resultant contract by other political subdivisions, municipalities, tax supported agencies and non-profit entities in the United States. Such participating agencies shall make purchases in their own name, make payments directly to the Contractor and shall be liable directly to Contractor holding the County harmless.

**27. PROTEST PROCEDURES**

The Procurement Officer will send an email to all Bidders informing each of the bid(s) that was/were selected and/or deemed to be a finalist. A Bidder whose bid was not selected or not deemed to be a finalist may file a written protest within five (5) business days of issuance of the email.



**A. Filing a Protest**

The protest of an award must be in writing. The following must be written on the cover of the protest: "Protest Relating to [SOLICITATION NUMBER]." The written protest and all supporting documentation must be emailed, hand-delivered or otherwise sent to the designated Procurement Officer so that it is **received no later than 5 p.m. of the fifth business day after** the email notifying bidders of the County's selection. Any protests not received by the deadline or sent to any person other than the designated Procurement Officer may be rejected or dismissed by the County at the County's sole discretion. A business day shall be defined as Monday through Friday 8:00 a.m. to 5:00 p.m. PST. except for County holidays.

**B. Contents of Protest**

The written protest must contain the following information: (1) the name, street address, electronic mail address, and telephone and facsimile number of the protester; (2) signature of the protester or its representative; (3) clearly state the grounds for the protest as set forth below and the evidence and/or credible allegations supporting each ground; (4) copies of any relevant documents; and (5) the form of relief requested. Protests should be concise and logically arranged. The protester may not present any additional grounds or arguments for protest after submission unless requested by the County. All protest documents are considered a public record.

**C. Grounds for Protest**

Protests may only be based on one or more of the following grounds, and must be supported by evidence and/or credible allegations that the award recommendation is based on arbitrary and/or capricious actions, as follows:

1. The protester believes there was a material error made by County officials.
2. The protester believes there was misconduct or impropriety by County officials or evaluation team members.
3. The protester believes there was abuse of discretion or process by County officials or evaluation team members.

**D. Protest Resolution Process****a. Informal Review and Resolution by Department**

The Director of the issuing department will review a timely protest and attempt to informally resolve it. The Director or designee may use all available resources and information, including soliciting information from, and revealing information to, other entities or sources in its attempt to informally resolve the protest.

If this attempt at informal resolution is unsuccessful, this shall be communicated to the protester. The protestor may, within two business days, request that the protest be forwarded to an independent review officer (IRO). Upon receiving such a request, the County shall forward the protest to the IRO, notify the protester, and provide the IRO's contact information to the protestor.

**b. Formal Review by IRO**

The IRO shall conduct an independent review of the protest to determine whether the grounds for the protest have merit. The IRO may use all available resources and information, including soliciting information from, and revealing information to, other entities in its attempt to resolve the protest. The IRO may also contact the protester or Agency/Department, or conduct a hearing as needed or if required by law.

**E. IRO Decision**

The IRO will issue a written decision to the protester and the Department within **20 business** days of receiving a protest. However, the time for decision may be extended by the IRO. The decision of the IRO may be appealed to the County Executive Officer by either the protestor or the County official responsible for the

procurement of the goods and/or services within two (2) business days of the issuance of the decision. The County Executive's decision regarding the protest shall be binding upon the parties unless otherwise provided by state law.

**F. Remedies**

The remedies available pursuant to these procedures may include, but are not limited to, the reevaluation of bids by the same or a new evaluation committee or the cancellation of a solicitation. However, no remedy may require the County to execute a contract with any entity, which authority is solely reserved for the Board of Supervisors or an official with appropriate delegated authority.

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**DEFINITIONS**

- a. "County Confidential Information" shall include all material, non-public information (including material, non-public County Data) appearing in any form (including, without limitation, written, oral or displayed), that is disclosed, directly or indirectly, through any means of communication by County, its agents or employees, to Contractor, its agents or employees, or any of its affiliates or representatives.
- b. "County Data" shall mean data and information received by Contractor from County. County Data includes any information or data that is transported across a County network, or that resides in a County-owned information system, or on a network or system under the control and management of a contractor for use by County. As between Contractor and County, all County Data shall remain the property of County.
- c. "Deliverables" means goods, services, software, hardware, information technology, telecommunications technology, enhancements, updates, new versions or releases, documentation, and any other items to be delivered pursuant to this Agreement, including any such items furnished incident to the provision of services.
- d. "Documentation" means manuals and other printed materials (including updates and revisions) necessary or useful to the County in its use or maintenance of the Deliverables provided pursuant to this Agreement.
- e. When used in this Agreement, "days" shall refer to calendar days unless stated otherwise.

**1. NON-EXCLUSIVE AGREEMENT**

The Agreement does not establish an exclusive contract between the County and the Contractor. The County expressly reserves rights to, without limitation, the following: the right to utilize others to provide products, support and services; the right to request proposals from others with or without requesting proposals from the Contractor; and the unrestricted right to bid any such product, support or service.

**2. DELIVERABLES**

Contractor agrees to provide the County all Deliverables on terms set forth in the Agreement, including all Exhibits that are attached to the Agreement and incorporated, as well as all necessary equipment and resources. However, this Agreement does not provide authority to ship Deliverables. That authority shall be established by contract release purchase orders placed by the County and sent to Contractor throughout the term of the Agreement. Each and every contract release purchase order shall incorporate all terms of this Agreement and this Agreement shall apply to same.

Any additional or different terms or qualifications sent by Contractor, including, without limitation, electronically or in mailings, attached to invoices or with any deliverables shipped, shall not become part of the contract between the parties. County's acceptance of Contractor's offer is expressly made conditional on this statement.

Contractor shall timely provide to the County, all documentation and manuals relevant to the Deliverables to be supplied, at no additional cost. Such documentation shall be delivered either in advance of the delivery of Deliverables or concurrently with the delivery of Deliverables.

Employees and agents of Contractor, shall, while on the premises of the County, comply with all rules and regulations of the premises, including, but not limited to, security requirements. If required, Contractor shall be responsible for installation, training and knowledge transfer activities in relation to the Deliverables being supplied.

All equipment shall be delivered to a County site specified in the contract release purchase order, or if not so specified therein, in the Statement of Work/Specifications.

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Contractor holds itself out as an expert in the subject matter of the Agreement. Contractor represents itself as being possessed of greater knowledge and skill in this area than the average person. Accordingly, Contractor is under a duty to exercise a skill greater than that of an ordinary person, and the manner in which performance is rendered will be evaluated in light of the Contractor's superior skill. Contractor shall provide equipment and perform work in a professional manner consistent, at minimum, with industry standards.

Contractor represents that all prices, warranties, benefits and other terms being provided hereunder are fair, reasonable and commensurate with the terms otherwise being offered by Contractor to its current customers ordering comparable Deliverables and services. County does not guarantee any minimum orders.

### 3. NECESSARY ACTS AND FURTHER ASSURANCES

The Contractor shall at its own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

### 4. COUNTING DAYS

Days are to be counted by excluding the first day and including the last day, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it is to be excluded.

### 5. PRICING

Unless otherwise stated, prices shall be fixed for the term of the Agreement, including all extensions. If any product listed in this Agreement is discontinued or upgraded prior to delivery, Contractor shall extend the same pricing towards a comparable replacement which is functionally equivalent or an upgraded version.

**Exhibit** of the Agreement is the basis for pricing and compensation throughout the term of the Agreement.

Notwithstanding the above, if at any time during the term of the Agreement the Contractor offers special, promotional or reduced pricing when compared with the price paid by the County, County shall benefit from that pricing, and that pricing shall apply to the County at the same time that is offered to other entities. Contractor is required, on an ongoing basis, to inform the County of any such special, promotional or reduced pricing.

### 6. MODIFICATION

This Agreement or any contract release purchase order may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement contract release purchase order will be binding on County unless it is in writing and signed by the County's authorized representative.

### 7. TIME OF THE ESSENCE

Time is of the essence in the delivery of goods by Contractor under this Agreement and any contract release purchase order. If Contractor fails to deliver goods and/or services on time, the Contractor shall be liable for any costs incurred by the County because of Contractor's delay. For instance, County may purchase or obtain the goods and/or services elsewhere and the Contractor shall be liable for the difference between the price in the Agreement and the cost to the County; or County may terminate on grounds of material and Contractor shall be liable for County's damages.

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The Contractor shall promptly reimburse the County for the full amount of its liability, or, at County's option, the County may offset such liability from any payment due to the Contractor under any contract with the County.

The rights and remedies of County provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law. The acceptance by County of late or partial performance with or without objection or reservation shall not waive the right to claim damage for such breach nor constitute a waiver of the rights or requirements for the complete and timely performance of any obligation remaining to be performed by the Contractor, or of any other claim, right or remedy of the County.

### **8. HAZARDOUS SUBSTANCES**

If any product being offered, delivered or supplied to the County is listed in the Hazardous Substances List of the Regulations of the Director of Industrial Relations with the California Occupational Safety and Health Standards Board, or if the product presents a physical or health hazard as defined in the California Code of Regulations, General Industry Safety Order, Section 5194 (T8CCR), Hazard Communication, the Contractor must include a Material Safety Data Sheet (MSDS) with delivery, or shipment. Each MSDS must reference the contract/purchase order number, and identify the "Ship To Address". All shipments and containers must comply with the labeling requirements of Title 49, Code of Federal Regulations by identifying the hazardous substance, name and address of manufacturer, and appropriate hazard warning regarding potential physical safety and health hazard.

### **9. SHIPPING AND RISK OF LOSS**

Goods shall be packaged, marked and otherwise prepared by Contractor in suitable containers in accordance with sound commercial practices. Contractor shall include an itemized packing list with each shipment and with each individual box or package shipped to the County. The packing list shall contain, without limitation, the applicable contract release purchase order number.

Unless otherwise specified in writing, all shipments by Contractor to County will be F.O.B. point of destination. Freight or handling charges are not billable unless such charges are referenced on the order. Transportation receipts, if required by contract release purchase order, must accompany invoice. Regardless of F.O.B. point, Contractor agrees to bear all risks of loss, injury, or destruction to goods and materials ordered herein which occur prior to delivery at County's destination; and such loss, injury or destruction shall not release Contractor from any obligation hereunder.

Any shipments returned to the Contractor shall be delivered as F.O.B. shipping point.

### **10. INSPECTION AND RELATED RIGHTS**

All goods and services are subject to inspection, testing, approval and acceptance by the County. Inspection shall be made within 60 days or a reasonable time after delivery, whichever period is longer. If the goods, services, or the tender of delivery fail in any respect to conform to the contract, the County may reject the entire tender, accept the entire tender, or, if the deliverables are commercially divisible, may, at its option, accept any commercial unit or units and reject the rest.

Contractor shall be responsible to reclaim and remove any rejected goods or items at its own expense. Should Contractor fail to reclaim or remove any rejected goods or items within a reasonable time, County shall, at its option dispose of such goods or items and require reimbursement from Contractor for any costs or expenses incurred.

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In the event that the Contractor's goods are not accepted by County, the Contractor shall be liable for any costs incurred by the County because of such failure by Contractor. For instance, County may purchase or obtain the goods elsewhere and the Contractor shall be liable for the difference between the price in the Agreement and the cost to the County, and any other costs incurred; or County may terminate for cause on grounds of material breach and Contractor shall be liable for County's damages.

The Contractor shall promptly reimburse the County for the full amount of its liability, or, at County's option, the County may offset such liability from any payment due to the Contractor under any contract with the County.

The rights and remedies of County provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law. The acceptance by County of late or partial performance with or without objection or reservation shall not waive the right to claim damage for such breach nor constitute a waiver of the rights or requirements for the complete and timely performance of any obligation remaining to be performed by the Contractor, or of any other claim, right or remedy of the County.

### 11. ADJUSTMENT BY COUNTY

The County reserves the right to waive a variation in specification of goods or services supplied by the Contractor. Contractor may request an equitable adjustment of payments to be made by County if County requires a change in the goods or services to be delivered. Any claim by the Contractor for resulting adjustment of payment must be asserted within 30 days from the date of receipt by the Contractor of the notification of change required by County; provided however, that the County's authorized representative decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment made for goods and services supplied by Contractor. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the County's authorized representative shall have the right to prescribe the manner of disposition of such property. Nothing in this clause shall excuse performance by Contractor.

### 12. INVOICING

Contractor shall invoice according to **Exhibit** of the Agreement. Invoices shall be sent to the County customer or department referenced in the individual contract release purchase order. Invoices for goods or services not specifically listed in the Agreement will not be approved for payment.

Invoices shall include: Contractor's complete name and remit-to address; invoice date, invoice number, and payment term; County contract number; pricing per the Agreement; applicable taxes; and total cost. Contractor and County shall make reasonable efforts to resolve all invoicing disputes within seven (7) days.

### 13. PAYMENT

The County's standard payment term shall be Net forty-five (45), unless otherwise agreed to by the parties. Payment shall be due Net forty-five (45) days from the date of receipt and approval of correct and proper invoices.

Notwithstanding the standard payment term set forth above, the parties agree that the Payment Term for this Agreement shall be the term set forth in the Key Provisions section of the Agreement above. If the Payment Term is a prompt payment discount term, then payment shall be made accordingly. For example, if the Payment Term is 2.25% ten (10) Net forty-five (45), payment shall be due ten (10) days from the date the County receives and approves the correct and proper invoice, but no later than forty-five (45) days from that date, and the County would take a discount of 2.25% of the total amount of the invoice if the payment is made in ten (10) days. The parties also agree that notwithstanding the Payment Term set forth in the Key Provisions section of the Agreement, that at any time during the contract term,

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either party may initiate an early payment discount on an invoice-by-invoice basis utilizing the Dynamic Discounting functionality of the Ariba Network. Contractor must have a registered account on the Ariba Network to utilize this functionality.

Payment is deemed to have been made on the date the County mails the warrant or initiates the electronic fund transfer.

#### **14. OTHER PAYMENT PROVISIONS**

Notwithstanding anything to the contrary, County shall not make payments prior to receipt of service or goods (i.e. the County will not make "advance payments"). Unless specified in writing in an individual purchase order, the County will not accept partial delivery with respect to any purchase order. Any acceptance of partial delivery shall not waive any of County's rights on an ongoing basis.

Sales tax shall be noted separately on every invoice. Items that are not subject to sales tax shall be clearly identified.

Contractor shall be responsible for payment of all state and federal taxes assessed on the compensation received under this Purchase Order and such payment shall be identified under the Contractor's federal and state identification number(s).

The County does not pay Federal Excise Taxes (F.E.T). The County will furnish an exemption certificate in lieu of paying F.E.T. Federal registration for such transactions is: County #94730482K. Contractor shall not charge County for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose, unless expressly authorized by the County.

#### **15. LATE PAYMENT CHARGES OR FEES**

The Contractor acknowledges and agrees that the County will not pay late payment charges.

#### **16. DISALLOWANCE**

In the event the Contractor receives payment for goods or services, which payment is later disallowed by the County or state or federal law or regulation, the Contractor shall promptly refund the disallowed amount to the County upon notification. At County's option, the County may offset the amount disallowed from any payment due to the Contractor under any contract with the County.

#### **17. TERMINATION FOR CONVENIENCE**

The County may terminate this Agreement or any order at any time for the convenience of the County, specifying the effective date and scope of such termination.

In no event shall the County be liable for costs incurred by the Contractor as a result of the termination or any loss of profits on the resulting order or portion thereof so terminated. In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other materials (collectively referred to as "materials") prepared by Contractor under this Agreement contract release purchase order shall become the property of the County and shall be promptly delivered to the County. Upon receipt of such materials, County shall pay the Contractor as full compensation for performance, the unit or pro rata price for the then-accepted portion of goods and/or services. If this Agreement is terminated, neither party may nullify obligations, if any, already incurred prior to the date of termination.

Termination for Convenience may be exercised anytime by and at the sole discretion of the County.

#### **18. TERMINATION FOR CAUSE**

County may terminate this Agreement or any order, in whole or in part, for cause upon thirty (30) days written notice to Contractor. For purposes of this Agreement, cause includes, but is not limited to, any of

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the following: (a) material breach of this Agreement or any contract release purchase order by Contractor, (b) violation by Contractor of any applicable laws or regulations; (c) assignment or delegation by Contractor of the rights or duties under this Agreement without the written consent of County or (d) less than perfect tender of delivery or performance by Contractor that is not in strict conformance with terms, conditions, specifications, covenants, representations, warranties or requirements in this Agreement or any order.

In the event County terminates for cause under this provision, the Contractor shall be liable for any costs incurred by the County because of Contractor's default. The Contractor shall promptly reimburse the County for the full amount of its liability, or, at County's option, the County may offset such liability from any payment due to the Contractor under any contract or order with the County.

If, after notice of termination under the provisions of this clause, it is determined for any reason that the Contractor was not in default under this provision of this clause, the County has the option to make its notice of termination pursuant to the Termination for Convenience clause and the rights and obligations of the parties would be in accordance with that provision.

In lieu of terminating immediately upon contractor's default, County may, at its option, provide written notice specifying the cause for termination and allow Contractor ten (10) days (or other specified time period by the County) to cure. If, within ten (10) days (or other specified time) after the County has given the Contractor such notice, Contractor has not cured to the satisfaction of the County, or if the default cannot be reasonably cured within that time period, County may terminate this Agreement at any time thereafter. County shall determine whether Contractor's actions constitute complete or partial cure. In the event of partial cure, County may, at its option, decide whether to (a) give Contractor additional time to cure while retaining the right to immediately terminate at any point thereafter for cause; or (b) terminate immediately for cause. If this Agreement is terminated, neither party may nullify obligations, if any, already incurred prior to the date of termination.

Notwithstanding any of the above, if County determines that any action by Contractor contributes to the curtailment of an essential service or pose an immediate threat to life, health, or property, County may terminate this Agreement effective immediately without penalty or opportunity to cure upon issuing either oral or written notice to the Contractor.

**19. TERMINATION FOR BANKRUPTCY**

If Contractor is adjudged to be bankrupt or should have a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of Contractor's insolvency, the County may terminate this Agreement immediately without penalty. For the purpose of this Section, bankruptcy shall mean the filing of a voluntary or involuntary petition of bankruptcy or similar relief from creditors; insolvency; the appointment of a trustee or receiver, or any similar occurrence reasonably indicating an imminent inability to perform substantially all the party's duties under this Agreement. If this Agreement is terminated, neither party may nullify obligations, if any, already incurred prior to the date of termination.

**20. BUDGETARY CONTINGENCY**

Performance and/or payment by the County pursuant to this Agreement is contingent upon the appropriation by the County of sufficient funds for Deliverables covered by this Agreement. If funding is reduced or deleted by the County for services covered by this Agreement, the County may, at its option and without penalty or liability, terminate this Agreement or offer an amendment to this Agreement indicating the reduced amount.



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**21. DISENTANGLEMENT**

Contractor shall cooperate with County and County's other contractors to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination. Contractor shall cooperate with County's efforts to ensure that there is no interruption of work required under the Agreement and no adverse impact on the supply of goods, provision of County services or the County activities. Contractor shall return to County all County assets or information in Contractor's possession.

For any software programs developed for use under the County's Agreement, Contractor shall provide a nonexclusive, nontransferable, fully-paid, perpetual, irrevocable, royalty-free worldwide license to the County, at no charge to County, to use, copy, and modify, all work or derivatives that would be needed in order to allow County to continue to perform for itself, or obtain from other providers, the services as the same might exist at the time of termination.

County shall be entitled to purchase at net book value those Contractor assets used for the provision of services to or for County, other than those assets expressly identified by the parties as not being subject to this provision. Contractor shall promptly remove from County's premises, or the site of the work being performed by Contractor for County, any Contractor assets that County, or its designee, chooses not to purchase under this provision.

Contractor shall deliver to County or its designee, at County's request, all documentation and data related to County, including, but not limited to, the County Data and client files, held by Contractor, within sixty (60) days of the request, and after return of same, Contractor shall destroy all copies thereof not turned over to County, all at no charge to County.

**22. DISPUTES**

Except as otherwise provided in this Agreement, any dispute arising under this contract that is not disposed of by agreement shall be decided by the County's authorized representative or designee, who shall furnish the decision to the Contractor in writing. The decision of the County's authorized representative or designee shall be final and conclusive. The Contractor shall proceed diligently with the performance of the contract pending the County's authorized representative or designee's decision. The County's authorized representative or designee shall not be required to decide issues that are legal or beyond his or her scope of expertise.

**23. ACCOUNTABILITY**

Contractor will be the primary point of contact for the performance of any subcontractors and assume the responsibility of all matters relating to the purchase of goods and/or services under this Agreement, including payment issues. If such or similar issues arise, the Contractor must take immediate action to correct or resolve the issues.

**24. NO ASSIGNMENT, DELEGATION OR SUBCONTRACTING WITHOUT PRIOR WRITTEN CONSENT**

Contractor may not assign any of its rights, delegate any of its duties or subcontract any portion of its work or business under this Agreement or any contract release purchase order without the prior written consent of County. No assignment, delegation or subcontracting will release Contractor from any of its obligations or alter any of its obligations to be performed under the Agreement. Any attempted assignment, delegation or subcontracting in violation of this provision is voidable at the option of the County and constitutes material breach by Contractor. As used in this provision, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance, or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity,

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whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

**25. MERGER AND ACQUISITION**

The terms of this Agreement will survive an acquisition, merger, divestiture or other transfer of rights involving Contractor. In the event of an acquisition, merger, divestiture or other transfer of rights Contractor must ensure that the acquiring entity or the new entity is legally required to:

- (1) Honor all the terms negotiated in this Agreement and any pre-acquisition or pre-merger Agreement between Contractor and the County, including but not limited to a) established pricing and fees; b) guaranteed product support until the contract term even if a new product is released; and c) no price escalation during the term of the contract.
- (2) If applicable, provide the functionality of the software in a future, separate or renamed product, if the acquiring entity or the new entity reduces or replaces the functionality, or otherwise provide a substantially similar functionality of the current licensed product. The County will not be required to pay any additional license or maintenance fee to an acquiring entity in order to continue with full use, benefit, and functionality of software licensed under this Agreement until expiration or termination.
- (3) Give 30-days written notice to the County following the closing of an acquisition, merger, divestiture or other transfer of right involving Contractor.

**26. COMPLIANCE WITH ALL LAWS & REGULATIONS APPLICABLE TO GOODS AND/OR SERVICES PROVIDED**

Contractor shall comply with all laws, codes, regulations, rules and orders (collectively, "Regulations") applicable to the goods and/or services to be provided hereunder. Contractor's violation of this provision shall be deemed a material default by Contractor, giving County a right to terminate the contract. Examples of such Regulations include but are not limited to California Occupational Safety and Health Act of 1973, Labor Code §6300 *et seq.* the Fair Packaging and Labeling Act, and the standards and regulations issued there under. Contractor agrees to indemnify and hold harmless the County for any loss, damage, fine, penalty, or any expense whatsoever as a result of Contractor's failure to comply with any Regulation applicable to the goods and/or services to be provided hereunder.

**27. FORCE MAJEURE**

Neither party shall be liable for failure of performance, nor incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused by events, occurrences, or causes beyond the reasonable control and without negligence of the parties. Such events, occurrences, or causes will include acts of God/nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, riots, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, lockout, blockage, embargo, labor dispute, strike, interruption or failure of electricity or telecommunication service ("Force Majeure Event").

Each party, as applicable, shall give the other party notice of its inability to perform and reasonable detail of the cause of the inability. Each party must use best efforts to remedy the situation and remove, as soon as practicable, the cause of its inability to perform or comply.

The party asserting a Force Majeure Event as a cause for non-performance shall have the burden of proving that reasonable steps were taken to minimize delay or damages caused by foreseeable events, that all non-excused obligations were substantially fulfilled, and that the other party was timely notified of the likelihood or actual occurrence which would justify such an assertion, so that other prudent precautions could be contemplated.

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The County shall reserve the right to terminate this Agreement and/or any applicable order or contract release purchase order effective immediately, upon written notice, in the event of non-performance by Contractor because of a Force Majeure Event. The County shall reserve the right to extend the agreement and time for performance at its discretion.

**28. INDEPENDENT CONTRACTOR**

Contractor shall supply all goods and/or perform all services pursuant to this Agreement as an independent contractor and not as an officer, agent, or employee of County. Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the County and Contractor. No person performing any services and/or supplying all goods shall be considered an officer, agent, or employee of County, nor shall any such person be entitled to any benefits available or granted solely to employees of the County.

Contractor is responsible for payment to sub-contractors and must monitor, evaluate, and account for the sub-contractor(s) services and operations.

**29. INSURANCE**

Contractor shall maintain insurance coverage pursuant to the exhibit setting forth insurance requirements, if such exhibit is attached to the Agreement.

**30. DAMAGE AND REPAIR BY CONTRACTOR**

Any and all damages to County owned or leased property caused by Contractor's negligence or operations shall be repaired, replaced or reimbursed by Contractor at no charge to the County. Repairs and replacements shall be completed within seventy-two (72) hours of the incident unless the County requests or agrees to an extension or another time frame. The cleanup of all damage related to accidental or intentional release of any/all non-hazardous or hazardous material (e.g. hydraulic fluid, fuel, grease, etc.) from Contractor's vehicles or during performance shall be the responsibility of the Contractor. All materials must be cleaned up in a manner and time acceptable to County (completely and immediately to prevent potential as well as actual environmental damage). Contractor must immediately report each incident to the County's Director of Procurement or designee. Damage observed by Contractor, whether or not resulting from Contractor's operations or negligence shall be promptly reported by Contractor to County. County may, at its option, approve and/or dictate the actions that are in County's best interests.

**31. LIENS, CLAIMS, ENCUMBRANCES AND TITLE**

The Contractor represents and warrants that all the goods and materials ordered and delivered are free and clear of all liens, claims or encumbrances of any kind. Title to the material and supplies purchased shall pass directly from Contractor to County at the F.O.B. point, subject to the right of County to reject upon inspection.

**32. ASSIGNMENT OF CLAYTON ACT, CARTWRIGHT ACT CLAIMS**

Contractor hereby assigns to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Contractor for sale to the County pursuant to this Agreement.

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**33. INDEMNITY**

Contractor shall indemnify, defend, and hold harmless the County, its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which Contractor contests its obligation to indemnify, defend and/or hold harmless the County under this Agreement and does not prevail in that contest.

**34. INTELLECTUAL PROPERTY INDEMNITY**

Contractor represents and warrants for the benefit of the County and its users that it is the exclusive owner of all rights, title and interest in the product or services to be supplied.

Contractor shall, at its own expense, indemnify, defend, settle, and hold harmless the County and its employees, agents and assigns against any claim or potential claim that any good, (including software) and/or service, or County's use of any good (including software) and/or service, provided under this Agreement infringes any patent, trademark, copyright or other proprietary rights, including trade secret rights. Contractor shall pay all costs, damages and attorneys' fees that a court or other adjudicatory body awards as a result of any such claim.

**35. WARRANTY**

Any goods and/or services furnished under this Agreement shall be covered by the most favorable commercial warranties that Contractor gives to any of its customers for the same or substantially similar goods and/or services. Any warranties so provided shall supplement, and shall not limit or reduce, any rights afforded to County by any clause in this Agreement, any applicable Uniform Commercial Code warranties, including, without limitation, Implied Warranty of Merchantability and Implied Warranty of Fitness for a Particular Purpose as well as any other express warranty.

Contractor expressly warrants that all goods supplied shall be new, suitable for the use intended, of the grade and quality specified, free from all defects in design, material and workmanship, in conformance with all samples, drawings, descriptions and specifications furnished by the County, in compliance with all applicable federal, state and local laws and regulations and free of liens, claims and encumbrances. Contractor warrants that all services shall strictly conform to the County's requirements.

Contractor shall immediately replace or repair any good not conforming to any warranty, or provide services to conform to County's requirements. If after notice, Contractor fails to repair or replace goods, or to provide services to conform to County's requirements, Contractor shall promptly refund to County the full purchase price paid by the County. This remedy is nonexclusive of other remedies and rights that may be exercised by the County. Claims for damages may include direct damages, such as cost to repair, as well as incidental and consequential damages.

During the provision of goods and services, Contractor may not disclaim any warranty, express or implied, and any such disclaimer shall be void. Additionally, the warranties above shall not be deemed to exclude Contractor's standard warranties or other rights and warranties that the County may have or obtain.

**36. COOPERATION WITH REVIEW**

Contractor shall cooperate with County's periodic review of Contractor's performance.

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Contractor shall make itself available onsite to review the progress of the project and Agreement, as requested by the County, upon reasonable advanced notice.

Contractor agrees to extend to the County or his/her designees and/or designated auditor of the County, the right to monitor or otherwise evaluate all work performed and all records, including service records and procedures to assure that the project is achieving its purpose, that all applicable County, State, and Federal regulations are met, and that adequate internal fiscal controls are maintained.

**37. AUDIT RIGHTS**

Pursuant to California Government Code Section 8546.7, the parties acknowledge and agree that every contract involving the expenditure of public funds in excess of \$10,000 may be subject to audit by the State Auditor.

All payments made under this Agreement shall be subject to an audit at County's option, and shall be adjusted in accordance with said audit. Adjustments that are found necessary as a result of auditing may be made from current billings.

The Contractor shall be responsible for receiving, replying to, and complying with any payment adjustments set forth in any County audits. The Contractor shall pay to County the full amount determined to be due as a result of a County audit. This provision is in addition to other inspection and access rights specified in this Agreement.

**38. ACCESS AND RETENTION OF RECORDS AND PROVISION OF REPORTS**

Contractor shall maintain financial records adequate to show that County funds paid were used for purposes consistent with the terms of the contract between Contractor and County. Records shall be maintained during the term of the Agreement and for a period of four (4) years from its termination, or until all claims have been resolved, whichever period is longer, unless a longer period is required under any contract or applicable law.

All books, records, reports, and accounts maintained pursuant to the Agreement, or related to the Contractor's activities under the Agreement, shall be open to inspection, examination, and audit by County, federal and state regulatory agencies, and to parties whose Agreements with the County require such access. County shall have the right to obtain copies of any and all of the books and records maintained pursuant to the Agreement, upon the payment of reasonable charges for the copying of such records.

Contractor shall provide annual reports that include, at a minimum, (i) the total contract release purchase order value for the County as a whole and individual County departments, and (ii) the number of orders placed, the breakdown (by customer ID/department and County) of the quantity and dollar amount of each product and/or service ordered per year. Annual reports must be made available no later than 30 days of the contract anniversary date unless otherwise requested.

Contractor shall also provide quarterly reports to the County that show a breakdown by contract release purchase order (i) the order date (ii) ship date (iii) estimated arrival date (iv) actual arrival date (v) list of products, services and maintenance items and (vi) the number and details of problem/service calls and department name that each such call pertains to (including unresolved problems). Quarterly reports must be made available to the County in electronic format, two (2) business days after the end of each quarter unless otherwise requested.

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**39. ACCESS TO BOOKS AND RECORDS PURSUANT TO THE SOCIAL SECURITY ACT**

Access to Books and Records: If and to the extent that, Section 1861 (v) (1) (1) of the Social Security Act (42 U.S.C. Section 1395x (v) (1) (1) is applicable, Contractor shall maintain such records and provide such information to County, to any payor which contracts with County and to applicable state and federal regulatory agencies, and shall permit such entities and agencies, at all reasonable times upon request, to access books, records and other papers relating to the Agreement hereunder, as may be required by applicable federal, state and local laws, regulations and ordinances. Contractor agrees to retain such books, records and information for a period of at least four (4) years from and after the termination of this Agreement. Furthermore, if Contractor carries out any of its duties hereunder, with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period, through a subcontract with a related organization, such subcontract shall contain these same requirements. This provision shall survive the termination of this Agreement regardless of the reason for the termination.

**40. COUNTY NO-SMOKING POLICY**

Contractor and its employees, agents and subcontractors, shall comply with the County's No Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within thirty (30) feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.

**41. FOOD AND BEVERAGE STANDARDS**

Except in the event of an emergency or medical necessity, the following nutritional standards shall apply to any foods and/or beverages purchased by Contractor with County funds for County-sponsored meetings or events.

If food is to be provided, healthier food options shall be offered. "Healthier food options" include (1) fruits, vegetables, whole grains, and low fat and low calorie foods; (2) minimally processed foods without added sugar and with low sodium; (3) foods prepared using healthy cooking techniques; and (4) foods with less than 0.5 grams of trans fat per serving. Whenever possible, Contractor shall (1) offer seasonal and local produce; (2) serve fruit instead of sugary, high calorie desserts; (3) attempt to accommodate special, dietary and cultural needs; and (4) post nutritional information and/or a list of ingredients for items served. If meals are to be provided, a vegetarian option shall be provided, and the Contractor should consider providing a vegan option. If pre-packaged snack foods are provided, the items shall contain: (1) no more than 35% of calories from fat, unless the snack food items consist solely of nuts or seeds; (2) no more than 10% of calories from saturated fat; (3) zero trans-fat; (4) no more than 35% of total weight from sugar and caloric sweeteners, except for fruits and vegetables with no added sweeteners or fats; and (5) no more than 360 mg of sodium per serving.

If beverages are to be provided, beverages that meet the County's nutritional criteria are (1) water with no caloric sweeteners; (2) unsweetened coffee or tea, provided that sugar and sugar substitutes may be provided as condiments; (3) unsweetened, unflavored, reduced fat (either nonfat or 1% low fat) dairy milk; (4) plant-derived milk (e.g., soy milk, rice milk, and almond milk) with no more than 130 calories per 8 ounce serving; (5) 100% fruit or vegetable juice (limited to a maximum of 8 ounces per container); and (6) other low-calorie beverages (including tea and/or diet soda) that do not exceed 40 calories per 8 ounce serving. Sugar-sweetened beverages shall not be provided

**42. DEBARMENT**

Contractor represents and warrants that it, its employees, contractors, subcontractors or agents (collectively "Contractor") are not suspended, debarred, excluded, or ineligible for participation in Medicare, Medi-Cal or any other federal or state funded health care program, if applicable, or from

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receiving Federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration.

Contractor must within thirty (30) calendar days advise the County if, during the term of this Agreement, Contractor becomes suspended, debarred, excluded or ineligible for participation in Medicare, Medi-Cal or any other federal or state funded health care program, as defined by 42. U.S.C. 1320a-7b (f), or from receiving Federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration. Contractor will indemnify, defend and hold the County harmless for any loss or damage resulting from the conviction, debarment, exclusion or ineligibility of the Contractor.

**43. CALIFORNIA PUBLIC RECORDS ACT**

The County is a public agency subject to the disclosure requirements of the California Public Records Act (“CPRA”). If Contractor’s proprietary information is contained in documents or information submitted to County, and Contractor claims that such information falls within one or more CPRA exemptions, Contractor must clearly mark such information “CONFIDENTIAL AND PROPRIETARY,” and identify the specific lines containing the information. In the event of a request for such information, the County will make best efforts to provide notice to Contractor prior to such disclosure. If Contractor contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before the County is required to respond to the CPRA request. If Contractor fails to obtain such remedy within the time the County is required to respond to the CPRA request, County may disclose the requested information.

Contractor further agrees that it shall defend, indemnify and hold County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorney’s fees) that may result from denial by County of a CPRA request for information arising from any representation, or any action (or inaction), by the Contractor.

**44. CONFLICT OF INTEREST; POLITICAL REFORM ACT DISCLOSURE REQUIREMENT**

If applicable, Contractor shall comply with all applicable requirements governing avoidance of impermissible client conflicts; and federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 *et seq.*, the California Political Reform Act (California Government Code section 87100 *et seq.*) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 *et seq.*). Failure to do so constitutes a material breach of this Agreement and is grounds for immediate termination of this Agreement by the County.

In accepting this Agreement, Contractor covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. Contractor further covenants that, in the performance of this Agreement, it will not use any contractor or employ any person having such an interest. Contractor, including but not limited to contractor’s employees, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the “Act”), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

Contractor, including but not limited to contractor’s employees and subcontractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the “Act”), that (1)

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requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under the Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

If the disclosure provisions of the Act are applicable to any individual providing service under the Agreement, Contractor shall, upon execution of the Agreement, provide the County with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to Contractor's employees, agents and subcontractors, that could be substantively involved in "making a governmental decision" or "serving in a staff capacity and in that capacity participating in making governmental decisions or performing duties that would be performed by an individual in a designated position," as part of Contractor's service to the County under the Agreement. Contractor shall ensure that such individuals file Statements of Economic Interests within 30 days of commencing service under the Contract, annually by April 1, and within 30 days of their termination of service under the Contract.

**45. SEVERABILITY**

Should any part of this Agreement between County and the Contractor or any individual contract release purchase order be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the validity of the remainder of the Agreement or any individual contract release purchase order which shall continue in full force and effect, provided that such remainder can, absent the excised portion, be reasonably interpreted to give the effect to the intentions of the parties.

**46. NON-WAIVER**

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement will be effective unless it is in writing and signed by County. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether similar or not, nor will any waiver constitute a continuing waiver unless the writing signed by the County so specifies.

**47. USE OF COUNTY'S NAME FOR COMMERCIAL PURPOSES**

Contractor may not use the name of the County or reference any endorsement from the County in any fashion for any purpose, without the prior express written consent of the County as provided by the County's authorized representative, or designee.

**48. HEADINGS AND TITLES**

The titles and headings in this Agreement are included principally for convenience and do not by themselves affect the construction or interpretation of any provision in this Agreement, nor affect any of the rights or obligations of the parties to this Agreement.

**49. HANDWRITTEN OR TYPED WORDS**

Handwritten or typed words have no greater weight than printed words in the interpretation or construction of this Agreement.

**50. AMBIGUITIES**

Any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement.

**51. ENTIRE AGREEMENT; MERGER**

This Agreement and its Exhibits and Attachments (if any) constitute the final, complete and exclusive statement of the terms of the agreement between the parties. It incorporates and supersedes all the



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agreements, covenants and understandings between the parties concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this Agreement. No prior or contemporaneous agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**52. EXECUTION AND COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument. The parties agree that this Agreement, its amendments, and ancillary agreements to be entered into in connection with this Agreement will be considered signed when the signature of a party is delivered a method described herein.

Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the County.

**53. NOTICES**

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail, return receipt requested; when sent by overnight carrier; or upon email confirmation to sender of receipt of a facsimile communication which is followed by a mailed hard copy from sender. Notices shall be addressed to the individuals identified in the Key Provisions of the Agreement as the County Contract Administrator and the Supplier Contact. Each party may designate a different person and address by sending written notice to the other party, to be effective no sooner than ten (10) days after the date of the notice.

**54. ACCOUNT MANAGER**

Contractor must assign an Account Manager to the County upon execution of the Agreement to facilitate the contractual relationship, be fully responsible and accountable for fulfilling the County’s requirements. Contractor represents and warrants that such person will ensure that the County receives adequate pre-sales and post-sales support, problem resolution assistance and required information on a timely basis.

**55. SURVIVAL**

All representations, warranties, and covenants contained in this Agreement, or in any instrument, certificate, exhibit, or other writing intended by the parties to survive this Agreement, will survive the termination of this Agreement.

**56. GOVERNING LAW, JURISDICTION AND VENUE**

This Agreement shall be construed and interpreted according to the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions shall be exclusively vested in state court in the County of Santa Clara. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara, and waive all venue objections.

**57. THIRD PARTY BENEFICIARIES**

This Agreement does not, and is not intended to, confer any rights or remedies upon any person or entity other than the parties

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**58. AUTHORITY**

Each party executing the Agreement on behalf of such entity represents that he or she is duly authorized to execute and deliver this Agreement on the entity's behalf, including, as applicable, the Board of Supervisors, the Board of Directors, or Executive Director. This Agreement shall not be effective or binding unless it is in writing and approved by the County's authorized representative, or authorized designee, as evidenced by their signature as set forth in this Agreement.

**59. LIVING WAGE**

Unless otherwise exempted or prohibited by law or County policy, Contractors that contract with the County to provide Direct Services, as defined in County of Santa Clara Ordinance Code Division B36 ("Division B36") and Board Policy section 5.5.5.5 ("Living Wage Policy"), and their subcontractors, where the contract value is \$100,000 or more, must comply with Division B36 and the Living Wage Policy and compensate their employees in accordance with Division B36 and the Living Wage Policy. Compliance and compensation for purposes of this provision includes, but is not limited to, components relating to fair compensation, earned sick leave, paid jury duty, fair workweek, worker retention, fair chance hiring, targeted hiring, local hiring, protection from retaliation, and labor peace. If Contractor and/or a subcontractor violate this provision, the Board of Supervisors or its designee may, at its sole discretion, take responsive actions including, but not limited to, the following:

- (1) Suspend, modify, or terminate the Direct Services Contract.
- (2) Require the Contractor and/or Subcontractor to comply with an appropriate remediation plan developed by the County.
- (3) Waive all or part of Division B36 or the Living Wage Policy.

This provision shall not be construed to limit an employee's rights to bring any legal action for violation of the employee's rights under Division B36 or any other applicable law. Further, this provision does not confer any rights upon any person or entity other than the Board of Supervisors or its designee to bring any action seeking the cancellation or suspension of a County contract. By entering into this contract, Contractor certifies that it is currently complying with County Code Division B36 and the County's Living Wage Policy with respect to applicable contracts, and warrants that it will continue to comply with County Code Division B36 and the County's Living Wage Policy with respect to applicable contracts.

**60. CONTRACTING PRINCIPLES**

All entities that contract with the County to provide services where the contract value is \$100,000 or more per budget unit per fiscal year and/or as otherwise directed by the Board, shall be fiscally responsible entities and shall treat their employees fairly. To ensure compliance with these contracting principles, all contractors shall: (1) comply with all applicable federal, state and local rules, regulations and laws; (2) maintain financial records, and make those records available upon request; (3) provide to the County copies of any financial audits that have been completed during the term of the Agreement; (4) upon the County's request, provide the County reasonable access, through representatives of the Contractor, to facilities, financial and employee records that are related to the purpose of the Agreement, except where prohibited by federal or state laws, regulations or rules.

**61. CONTRACTOR TRAVEL EXPENSES**

Contractor shall be solely responsible for any travel fees or out of pocket expenses.

**62. INFORMATION SECURITY COMPLIANCE**

A. For purposes of this section, the following Definitions will apply:

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- (1) "Breach" means unauthorized access to, or use of, County Data or information security networks or systems that compromises confidentiality, integrity, and/or availability those systems or County Data.
  - (2) "Independent Penetration Testing," or "pen testing," means the County's practice - by using an independent third party - of testing a computer system, network or web application to find security vulnerabilities that an attacker could exploit
  - (3) "Risk Assessment" means the process by which the County's Information Security Office ("ISO") assesses (i) the Contractor's information security program, and related aspects, by identifying, analyzing, and understanding how the Contractor will store, process and transmit County Data; and (ii) the potential impact on the County of any security risks, weaknesses and threats related to safeguarding County assets and County Data. The Risk Assessment usually includes the ISO's evaluation of documentation provided by the Contractor.

B. Contractor shall do all of the following:

- (1) Maintain or improve upon its information security posture at the time of the County's initial Risk Assessment as reasonably determined by the County. Contractor shall provide written notice to the County's Information Security Office ("ISO") of any changes or deficiencies to its information security posture.
- (2) Protect the confidentiality, integrity, availability of the County's data and comply with any information security requirements provided to Contractor by the ISO for the entire term of the Agreement.
- (3) Follow any updated security requirements for the remaining term of the Agreement if the County re-evaluates the Risk Assessment, conducts periodic audits, and/or completes annual Independent Penetration Testing.
- (4) Upon discovering any Breach that could impact the County, whether caused by Contractor, its officers, employees, contractors or agents or others, the Contractor shall notify the ISO at [o365-iso-team@sccconnect.onmicrosoft.com](mailto:o365-iso-team@sccconnect.onmicrosoft.com) within 24 hours. Contractor shall also comply with all of its other obligations in this Agreement relating to breaches and potential breaches.

**63. COUNTY DATA**

- (1) Contractor shall not acquire any ownership interest in County Data (including County Confidential Information). As between Contractor and County, all County Confidential Information and/or County Data shall remain the property of the County. Contractor shall not, without County's written permission, use or disclose County Data (including County Confidential Information) other than in the performance of its obligations under this Agreement.
- (2) Contractor shall be responsible for establishing and maintaining an information security program that is designed to ensure the security and confidentiality of County Data, protect against any anticipated threats or hazards to the security or integrity of County Data, and protect against unauthorized access to or use of County Data that could result in substantial harm or inconvenience to County or any end users. Upon termination or expiration of this Agreement, Contractor shall seek and follow County's direction regarding the proper disposition of County Data.
- (3) Contractor shall take appropriate action to address any incident of unauthorized access to County

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Data, including addressing and/or remedying the issue that resulted in such unauthorized access, and notifying County by phone or in writing within 24 hours of any incident of unauthorized access to County Data, or any other breach in Contractor's security that materially affects County or end users. If the initial notification is by phone, Contractor shall provide a written notice within 5 days of the incident. Contractor shall be responsible for ensuring compliance by its officers, employees, agents, and subcontractors with the confidentiality, privacy, and information security requirements of this Agreement. Should County Confidential Information and/or legally protected County Data be divulged to unauthorized third parties, Contractor shall comply with all applicable federal and state laws and regulations, including but not limited to California Civil Code sections 1798.29 and 1798.82 at Contractor's sole expense. Contractor shall not charge County for any expenses associated with Contractor's compliance with these obligations.

- (4) Contractor shall defend, indemnify and hold County harmless against any claim, liability, loss, injury or damage arising out of, or in connection with, the unauthorized use, access, and/or disclosure of information by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County.

**64. ACCESS TO COMPETITIVELY BID AGREEMENTS**

Where the contract award is a result of a formal competitive solicitation, Contractor may opt to permit the use of this Agreement by other political subdivisions, municipalities, tax supported agencies and non-profit entities in the United States. Such participating agencies shall make purchases in their own name, make payments directly to the Contractor and shall be liable directly to Contractor holding the County of Santa Clara harmless.

If applicable, Contractor shall be required to maintain a list of cooperative entities using this Agreement. The list shall report dollar volumes spent annually and shall be provided on an annual basis to the County, at the County's request.

**65. COMPLIANCE WITH ALL LAWS AND REGULATIONS INCLUDING NONDISCRIMINATION, EQUAL OPPORTUNITY, AND WAGE THEFT PREVENTION**

Contractor's violation of this provision shall be deemed a material default by Contractor, giving County a right to terminate the Agreement. Examples of such Regulations include but are not limited to California Occupational Safety and Health Act of 1973, Labor Code §6300 *et seq.* the Fair Packaging and Labeling Act. and the standards and regulations issued there under. Contractor agrees to indemnify and hold harmless the County for any loss, damage, fine, penalty, or any expense whatsoever as a result of Contractor's failure to comply with the act and any standards or regulations issued there under.

- (1) Compliance with All Laws. Contractor shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, "Laws"), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.
- (2) Compliance with Non-Discrimination and Equal Opportunity Laws: Contractor shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County's policies for contractors on nondiscrimination and equal opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Government Code sections 12900 *et seq.*); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing, Contractor shall not discriminate against any subcontractor, employee, or

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applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall Contractor discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

- (3) Compliance with Wage and Hour Laws: Contractor shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local Minimum Wage, Prevailing Wage, or Living Wage laws.
- (4) Definitions: For purposes of this Section, the following definitions shall apply. A “Final Judgment, Decision, Determination, or Order” shall mean a judgment, decision, determination, or order (a) which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government agencies include the federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment and Housing. Violation of a pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual's sex, gender, gender identity, gender expression, sexual orientation, race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the City of San Jose's Office of Equality Assurance.
- (5) Prior Judgments, Decisions or Orders against Contractor: By signing this Agreement, Contractor affirms that it has disclosed any final judgments, decisions, determinations, or orders that (a) were issued in the five years prior to executing this Agreement by a court or investigatory government agency and (b) found that Contractor violated an applicable wage and hour or pay equity law. Contractor further affirms that it has satisfied and complied with – or has reached agreement with the County regarding the manner in which it will satisfy – any such final judgments, decisions, determinations, or orders.
- (6) Violations of Wage and Hour Laws or Pay Equity Laws During Term of Agreement: If at any time during the term of this Agreement, Contractor receives a Final Judgment, Decision, Determination, or Order rendered against it for violation of an applicable wage and hour Law or pay equity Law, then Contractor shall promptly satisfy and comply with any such Final Judgment, Decision, Determination or Order. Contractor shall inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM) of any relevant Final Judgment, Decision, Determination, or Order against it within 30 days of the Final Judgment, Decision, Determination, or Order becoming final or of learning of the Final Judgment, Decision, Determination, or Order, whichever is later. Contractor shall also provide any documentary evidence of compliance with the Final Judgment, Decision, Determination, or Order within 5 days of satisfying the Final Judgment, Decision, Determination, or Order. Any notice required by this paragraph shall be addressed to the Office of the County Executive-OCCM at 70 W. Hedding Street, East Wing, 11th Floor, San José, CA 95110. Notice provisions in this paragraph are separate from any other notice provisions in this

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Agreement and, accordingly, only notice provided to the Office of the County Executive-OCCM satisfies the notice requirements in this paragraph.

- (7) Access to Records Concerning Compliance with Pay Equity Laws: In addition to and notwithstanding any other provision of this Agreement concerning access to Contractor's records, Contractor shall permit the County and/or its authorized representatives to audit and review records related to compliance with applicable pay equity Laws. Upon the County's request, Contractor shall provide the County with access to any and all facilities and records, including but not limited to financial and employee records, that are related to the purpose of this Section, except where prohibited by federal or state laws, regulations or rules. County's access to such records and facilities shall be permitted at any time during Contractor's normal business hours upon no less than 10 business days' advance notice.
- (8) Pay Equity Notification: Contractor shall (1) directly provide each employee working in California and each person applying for a job in California with a written copy of any applicable pay equity Laws, or (2) electronically disseminate the text of applicable pay equity Laws to each California employee and job applicant, either directly or by posting a copy in conspicuous places available to employees and applicants. Such notification shall occur at least once during the term of this Agreement and, if this Agreement is a multi-year Agreement, at least annually thereafter.
- (9) Material Breach: Failure to comply with any part of this Section shall constitute a material breach of this Agreement. In the event of such a breach, the County may, in its discretion, exercise any or all remedies available under this Agreement and/or at law. County may, among other things, take any or all of the following actions:
- (i) Suspend or terminate any or all parts of this Agreement.
  - (ii) Withhold payment to Contractor until full satisfaction of a Final Judgment, Decision, Determination, or Order.
  - (iii) Offer Contractor an opportunity to cure the breach.
- (10) Subcontractors: Contractor shall impose all of the requirements set forth in this Section on any subcontractors permitted to perform work under this Agreement. This includes ensuring that any subcontractor receiving a Final Judgment, Decision, Determination, or Order for violation of an applicable wage and hour Law promptly satisfies and complies with such Final Judgment, Decision, Determination, or Order.

## 66. LICENSE GRANT

Contractor grants to County a perpetual, non-exclusive, royalty-free, fully paid-up license to use the Software for its business activities, which includes fulfilling its mission of providing services to the public. This includes the right to use licensed software in backup, disaster recovery, and testing environments.

## 67. CLICK-THROUGH AGREEMENTS AND CONTRACTOR POLICIES

(1) No provisions of any shrink-wrap or any click-through agreement (or other form of "click to accept" agreement) that may routinely accompany any products or services acquired under this Agreement shall apply in place of, or serve to modify any provision of this Agreement, even if a user or authorized officer of County purports to have affirmatively accepted such shrink-wrap or click through provisions. Without limiting the foregoing, no "terms of use," "privacy policy" or other policy on Contractor's website or application (collectively, "Policies") or another website that may routinely accompany any products or

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services acquired under this Agreement shall apply in place of or serve to modify any provision of this Agreement.

(2) For the avoidance of doubt and without limiting the foregoing, in the event of a conflict between any such shrink-wrap, click-through provisions or Policies (irrespective of the products or services that such provisions attach to) and any term or condition of this Agreement, the relevant term or condition of this Agreement shall govern to the extent of any such conflict. Only the provisions of this Agreement as amended from time to time, and executed by the parties, shall apply to County and or authorized user.

(3) The parties acknowledge that the County and or authorized users may be required to click "Accept" as a routine condition of access to services through the Contractor's website or other application. Such click-through provisions or Policies on Contractor's website shall be null and void for County and/or each such authorized user and shall only serve as a mechanical means for accessing such services.



**ITB-PRC-FY22-0102**

**Bid Requirements Form  
RSA Tokens, Licenses and Support/  
Maintenance**

Item #	Manufacturer Part #	Description	Classification	Qty	Unit Price
1	AUT000025E8	RSA Authentication Manager Enterprise Edition - (v. 8.0)	Software	10 - 25	
2	AUT0000100E8	RSA Authentication Manager Enterprise Edition - (v. 8.0)	Software	30 - 100	
3	AUT0000150E8	RSA Authentication Manager Enterprise Edition - (v. 8.0)	Software	105 - 150	
4	AUT0000250E8	RSA Authentication Manager Enterprise Edition - (v. 8.0)	Software	155 - 250	
5	AUT0000500E8	RSA Authentication Manager Enterprise Edition - (v. 8.0)	Software	255 - 500	
6	AUT0000750E8	RSA Authentication Manager Enterprise Edition - (v. 8.0)	Software	505 - 750	
7	AUT0001500E8	RSA Authentication Manager Enterprise Edition - (v. 8.0)	Software	755 - 1,500	
8	AUT0002500E8	RSA Authentication Manager Enterprise Edition - (v. 8.0)	Software	1,555 - 2,500	
9	AUT0005000E8	RSA Authentication Manager Enterprise Edition - (v. 8.0)	Software	2,505 - 5,000	
10	AUT0010000E8	RSA Authentication Manager Enterprise Edition - (v. 8.0)	Software	5,005 - 10,000	
11	AUT0000025EE1-8	RSA Enhanced Support - Technical support for RSA Authentication	Support	10 - 25	
12	AUT0000100EE1-8	RSA Enhanced Support - Technical support for RSA Authentication	Support	30 - 100	
13	AUT0000150EE1-8	RSA Enhanced Support - Technical support for RSA Authentication	Support	105 - 150	
14	AUT0000250EE1-8	RSA Enhanced Support - Technical support for RSA Authentication	Support	155 - 250	
15	AUT0000500EE1-8	RSA Enhanced Support - Technical support for RSA Authentication	Support	255 - 500	
16	AUT0000750EE1-8	RSA Enhanced Support - Technical support for RSA Authentication	Support	505 - 750	
17	AUT0001500EE1-8	RSA Enhanced Support - Technical support for RSA Authentication	Support	755 - 1,500	
18	AUT0002500EE1-8	RSA Enhanced Support - Technical support for RSA Authentication	Support	1,555 - 2,500	
19	AUT0005000EE1-8	RSA Enhanced Support - Technical support for RSA Authentication	Support	2,505 - 5,000	
20	AUT0010000EE1-8	RSA Enhanced Support - Technical support for RSA Authentication	Support	5,005 - 10,000	
21	AUTRBA0000025	RSA Authentication Manager RBA/ODA - (v. 8.0)	Software	10 - 25	
22	AUTRBA0000100	RSA Authentication Manager RBA/ODA - (v. 8.0)	Software	30 - 100	
23	AUTRBA0000150	RSA Authentication Manager RBA/ODA - (v. 8.0)	Software	105 - 150	
24	AUTRBA0000250	RSA Authentication Manager RBA/ODA - (v. 8.0)	Software	155 - 250	
25	AUTRBA0000500	RSA Authentication Manager RBA/ODA - (v. 8.0)	Software	255 - 500	
26	AUTRBA0000750	RSA Authentication Manager RBA/ODA - (v. 8.0)	Software	505 - 750	
27	AUTRBA0001500	RSA Authentication Manager RBA/ODA - (v. 8.0)	Software	755 - 1,500	
28	AUTRBA0002500	RSA Authentication Manager RBA/ODA - (v. 8.0)	Software	1,555 - 2,500	
29	AUTRBA0005000	RSA Authentication Manager RBA/ODA - (v. 8.0)	Software	2,505 - 5,000	
30	AUTRBA0010000	RSA Authentication Manager RBA/ODA - (v. 8.0)	Software	5,005 - 10,000	
31	AUTRBA0050000	RSA Authentication Manager RBA/ODA - (v. 8.0)	Software	10,005 - 50,000	
32	SID700-6-60-36-5	RSA SecurID SID700 hardware token	Hardware	5	
33	SID700-6-60-36-10	RSA SecurID SID700 hardware token	Hardware	10	
34	SID700-6-60-36-25	RSA SecurID SID700 hardware token	Hardware	25	
35	SID700-6-60-36-50	RSA SecurID SID700 hardware token	Hardware	50	
36	SID700-6-60-36-100	RSA SecurID SID700 hardware token	Hardware	100	
37	SID700-6-60-36-250	RSA SecurID SID700 hardware token	Hardware	250	
38	SID700-6-60-36-A	RSA SecurID SID700 hardware token	Hardware	255 - 750	
39	SID700-6-60-36-B	RSA SecurID SID700 hardware token	Hardware	755 - 1,500	
40	SID700-6-60-36-C	RSA SecurID SID700 hardware token	Hardware	1,505 - 2,500	
41	SID700-6-60-36-D	RSA SecurID SID700 hardware token	Hardware	2,505 - 5,000	
42	S820-8-60-60-A-EL	RSA SecurID Software Token Seeds (SID820)	Software	10 - 250	
43	S820-8-60-60-B-EL	RSA SecurID Software Token Seeds (SID820)	Software	255 - 750	
44	S820-8-60-60-C-EL	RSA SecurID Software Token Seeds (SID820)	Software	755 - 1,500	
45	S820-8-60-60-D-EL	RSA SecurID Software Token Seeds (SID820)	Software	1,505 - 2,500	

\*Shipping Term: All products must be shipped FOB destination, freight prepaid and allowed. The County shall not pay more for any additional shipping charges unless otherwise expressed in the ensuing contract document.



## Question and Answers for Bid #ITB-PRC-FY22-0102 - RSA Tokens, Licenses, and Support/Maintenance

### Overall Bid Questions

There are no questions associated with this bid.

Question Deadline: Oct 15, 2021 5:00:00 PM PDT