



## COUNTY OF SAN MATEO STANDARD TERMS AND CONDITIONS

FOR INVITATIONS FOR BID (IFB's), REQUESTS FOR PROPOSALS (RFP's), REQUESTS FOR QUOTATIONS (RFQ's), PURCHASE ORDERS (PO's), VENDOR AGREEMENTS (VA's), AND CONTRACTS.

### I. COMMENCEMENT OF PERFORMANCE

#### A. Written Notice

Until the County provides written authorization to commence deliveries of the goods and services specified, there is no contractual agreement between the County and the selected bidder. No verbal instructions or promises are binding on the County.

#### B. Purchase Orders and Task Orders

If the contract anticipates multiple Purchase Orders or Task Orders, the relevant scope of work, payment terms, delivery instructions, period of performance, and any unique contractual terms and conditions may be set forth in the Purchase Orders or Task Orders.

#### C. Estimated Quantities

If this solicitation is for an indefinite quantity contract, any estimates of expected use or quantities provided are for bid purposes only. The County does not guarantee any specific number of orders.

### II. PAYMENT

#### A. Compensation

1. The County will pay the quoted prices as full consideration for Contractor's full, complete and faithful performance of the Contractor's obligations under the contract.
2. The County does not accept COD shipments. Payment will be by one of the following methods, as indicated in the Contract Documents:
  - i. Full payment will be made after the County's acceptance of goods or services and receipt of a complete invoice, as applicable; or
  - ii. Partial payments will be made in accordance with the schedule set forth in the Scope of Work; or
  - iii. Payments will be invoiced monthly by Contractor in arrears, based upon goods or services provided and at the amounts set forth in the payment schedule up to the maximum amount of the contract; or
  - iv. The County may issue Purchase or Task Orders, which will be paid according to the payment schedule attached to the contract or Purchase or Task Order, or on the County's receipt and acceptance of the goods and services and receipt and acceptance of a complete invoice; or

- v. As otherwise agreed to by the parties.

**B. Late Payment Charges**

The County will not be responsible for late payment charges unless they are stated on the Purchase Order or contract. A payment is late only if payment of an invoice exceeds the time allowed by the payment terms of the Purchase Order or contract.

**C. Credits**

Prior to releasing final payment, the County must be reimbursed for any overpayments, advance payments, or other credits due from the Contractor, and the County may deduct these amounts from payments otherwise due Contractor.

**D. Conditions Prerequisite to Payment**

The County may withhold payment under any of the following circumstance:

1. Contractor, with or without knowledge, made a misrepresentation of substantial and material nature with respect to any information furnished to County;
2. Contractor took any action pertaining to this agreement that required County approval, without having first received County approval;
3. Contractor was or is in default under any of the terms of this contract;
4. The County or any other authorized government entity has requested but has not received and approved any reports, data, audits or other information requested from Contractor, including final reports and documentation due at contract termination.

**E. Payment in the event of non-compliance**

If the County determines that the quantity or quality of the goods provided or work performed is unacceptable, the County will notify Contractor and may withhold payment until correction has been made to County's satisfaction. If corrections have not been completed after what the County deems a reasonable time, County may make corrections on its own or through a third party, and deduct the cost of replacement or correction from any sums that may be or become due to Contractor on this or any other agreement. No additional payment will be provided to Contractor for replacements or corrections.

**III. SHIPPING AND DELIVERY**

**A. Shipping**

1. Unless otherwise directed, all goods are to be shipped FOB destination, freight prepaid, and unloaded to the designated dock or unloading area. The County will have no liability for any items until they are accepted at their final destination by the County.
2. All shipments of goods must include a packing list.
3. Packing lists, packages, shipping notices, and other documents affecting an order must include applicable order numbers, or the orders may be rejected and returned at no cost to the County.

**B. Delivery**

1. If delivery time is not specified on a Purchase Order, it will be within 30 calendar days after County's issuance of the Purchase Order.
2. The County will not pay any charge for delivery unless the charge has been expressly included and itemized in the bid or price quote that was accepted by the County.
3. Where shipping addresses indicate room numbers, delivery must be made to that location at no additional charge.

**IV. SUBCONTRACTOR REIMBURSEMENT AND PAYMENT**

**A. Payment of Subcontractors**

Contractor must pay Subcontractors within ten calendar days from receipt of each payment by the County, unless the County agrees in writing to a longer period, or has agreed that the Contractor may hold retainage.

**B. Subcontractor Retainage**

1. The Contractor, and as applicable, any Subcontractor, must release all retainage withheld from Subcontractors within ten Business Days after the County's release of retainage to Contractor.
2. The Contractor or its Subcontractors may only withhold retainage on the same terms and conditions as the County withholds retainage from Contractor.
3. Delay or postponement of payment to Subcontractors may take place only for good cause and with the County's prior written approval. Violation of these provisions may subject the violator to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement does not impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or Subcontractor.

**V. INVOICES**

**A. General**

Unless otherwise instructed in writing, invoices are to be handled as follows:

1. On each invoice, include the title of the contract, any applicable Task or Purchase Order number, and a mailing address for payment if electronic fund transfer cannot be made.
2. Submit invoices no later than 45 calendar days after completion of each billing period, or if none is specified, on the later of:
  - i. completion of a Purchase Order or Task Order, or
  - ii. delivery and County acceptance of goods or services.
3. Payment will be deemed made upon mailing by the County or electronic release of funds.

**B. Final Invoice**

Upon completion of all Deliverables to the satisfaction of the County, submit a final invoice, which together with all previous invoices, may not exceed the maximum amount of the contract. The County will make payment of the final invoice within 30 calendar days of receipt of all required documentation, completion of the Contractor's obligations (except for warranty performance) and

approval of such invoice. Acceptance of final payment releases the County from all further Contractor claims under this contract.

## **VI. INDEPENDENT CONTRACTOR**

### **A. Not a County Employee**

In performance under this contract, Contractor will act as an independent contractor and not as an employee of the County, which has no control over Contractor's means, method or manner of performance.

### **B. No Agency**

Except as the County may specify in writing, Contractor has no authority, express or implied, to act on behalf of the County in any capacity whatsoever, as an agent or otherwise, or to bind the County or its directors, agents, or employees to any obligation.

### **C. Employer Responsibilities**

Contractor has and retains full control over employment, compensation, and discharge of all its employees and is fully responsible for all matters relating to its agents and employees, including all applicable laws and regulations governing employee taxes, withholding, and benefits.

## **VII. INSURANCE**

Prior to commencing delivery of the goods and services, provide evidence of all required insurance indicated in the solicitation. The required insurance must be maintained for the entire term of the contract. The County's acceptance of insurance certificates or endorsements that vary from the requirements in this section will not constitute a waiver by the County of strict compliance with the requirements.

### **A. Acceptability of Insurers**

All policies must be issued by companies licensed to do business in California and rated not less than A-VII by A.M. Best, except for the State Compensation Insurance Fund.

### **B. Failure to Provide or Maintain Insurance**

Notify the County within five Business Days following first notice of termination, cancellation, or any change in insurance coverage. Failure to provide and continue in force any required insurance is a material breach of this contract that may constitute cause for termination.

### **C. Workers' Compensation and Employer's Liability Insurance**

Contractor certifies, as required by Section 1861 of the California Labor Code, that

1. It is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and
2. It will comply with such provisions before commencing performance under this contract.

### **D. Liability Insurance**

Maintain such bodily injury liability and property damage liability insurance as will protect Contractor and all of its employees/officers/agents while performing work covered by this contract

from all claims for damages for bodily injury, including accidental death, as well as all claims for property damage which may arise from Contractor's operations under this contract, whether such operations be by Contractor, any Subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance must be combined single limit bodily injury and property damage for each occurrence and may not be less than the amounts specified below:

- Comprehensive General Liability Insurance..... \$1,000,000.00
- Motor Vehicle Liability Insurance..... \$1,000,000.00
- Professional Liability Insurance ..... \$1,000,000.00

**E. Special Insurance Requirements - Cyber Liability**

If the contract involves provision of goods and services related to computers, networks, or systems, or storage or access to any County Systems or Data, the following insurance is required.

1. Privacy and Network Security Insurance \$2,000,000.00

During the term of the contract and for three years thereafter, maintain coverage for liability and remediation arising out of unauthorized use of, or unauthorized access to, electronic data or software within Contractor's network or business including privacy breaches no matter how they occur, denial or loss of service, introduction, implantation, or spread of malicious software code, and unauthorized access to or use of computer systems. The policy also must provide coverage for liability claims, computer theft, extortion, or any unintentional act, mistake, error, or omission made by users of Contractor's electronic data or software while providing services to the County. No exclusion/restriction for unencrypted portable devices/media may be on the policy.

2. Technology Errors and Omissions \$2,000,000.00

During the term of the contract and for three years thereafter, maintain coverage for liabilities arising from errors, omissions, or negligent acts in rendering or failing to render computer or information technology services and technology products, including at a minimum, coverage for systems analysis, design, development, integration, modification, maintenance, and programming; data processing; installation, repair, maintenance, management of computer or technology hardware, software, networks or systems; data entry, modification, verification, maintenance, storage, retrieval or preparation of data input; other related services provided by Contractor.

**F. Additional Insured**

The County and its officers, agents, and employees must be named as additional insured on all applicable insurance policies, which must also contain provisions that:

1. The insurance afforded thereby to County and its officers, agents, employees, and servants will be primary insurance to the full limits of liability of the policy; and
2. If the County or its officers, agents, or employees have other insurance against the loss covered by such a policy, the other insurance will be excess insurance only.

**G. No Limitation on Liabilities and Obligations**

Requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of insurance by the County are not intended to and do not limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to the contract.

#### **H. Coverage for Subcontractors**

All insurance required of the Contractor must also be provided by or on behalf of all Subcontractors to cover the services of any Subcontractors performing under this contract. Contractor will be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to Subcontractors.

#### **I. Deductibles or Self-Insured Retentions**

All deductibles or self-insured retentions are the responsibility of Contractor and must be declared to and approved by the County.

#### **J. Claims-Made Coverages**

General Liability and related umbrella or excess policies may not be written on a claims-made basis. If Errors and Omissions coverage is written on a claims-made basis, the retroactive date must be shown and must be before the date of the contract or the beginning of work performed pursuant to the contract and the insurance must be maintained for at least seven years after completion of work under the contract.

### **VIII. INDEMNIFICATION**

#### **A. General**

At no additional cost to the County and to the maximum extent permitted by law, the Contractor will indemnify and defend the County, its directors, officers, agents, employees, and any additional insured parties identified in the Contract Documents from and against all claims, demands, actions, losses, judgments, expenses, and liabilities arising out of or pertaining to the Contractor's performance in connection with this contract, whether asserted or established and whether or not involving a third party. The duties described in this paragraph include payment of attorney's fees and all expenses of investigating and defending any such claims, and apply regardless of whether any insurance policies are applicable. Any insurance policy limits do not act as a limitation upon the amount of indemnification to be provided by Contractor.

#### **B. System and Data Security**

Contractor bears full responsibility for ensuring that any product or service provided does not introduce any spyware, adware, ransomware, rootkit, key-logger, virus, Trojan, worm, or any other malicious code or mechanism designed to permit unauthorized access to or recording of, or which may restrict an authorized user's access to or use of County Systems or County Data.

#### **C. Retention of Funds**

In addition to any other remedy authorized by law, the County may retain as much money due Contractor under this or any other contract as the County considers necessary until disposition has been made of any claim for damages.

#### **D. Survival of Indemnification**

The indemnification requirements of this contract will survive in perpetuity.

## **IX. TERMINATION**

### **A. Termination for Cause**

1. Should Contractor, in County's sole judgement, materially breach this contract, be subject to litigation or proceedings that may adversely affect performance, become insolvent, fail to pay bills when due, make an assignment for the benefit of creditors, go out of business, or cease production, the County will send a written notice to cure. If the County is not satisfied with the cure or efforts to cure within the time specified in the notice, or if no time is specified, within ten calendar days of the notice date, County may terminate this contract. Should Contractor decline to cure, or request termination, the County may terminate this contract immediately.
2. The County may terminate this contract immediately if Contractor is found non-responsible by another government entity, or in the County's sole judgement, continuance would be prejudicial to the public interest.
3. In the event of termination for cause, all costs the County incurs in completing Contractor's performance may be deducted from any sums due Contractor. Costs of completion include delay costs, the cost of soliciting a new contractor, and any payments made to the new contractor.
4. In the event of Termination for Cause and subsequent determination that Contractor was not in material breach, the termination will be deemed termination for convenience.

### **B. Termination for Convenience**

The County may terminate this contract or a Task Order, in whole or in part, at any time, by providing 30 calendar days' written notice to Contractor. Contractor will be paid reasonable closeout costs as well as costs and profit for work performed up to the time of termination. County will not pay for goods and services not delivered. If Contractor has any property in its possession belonging to the County, Contractor will account for and dispose of it as directed by County. Contractor must submit a final invoice identifying both project-related costs and closeout costs no later than 30 calendar days after the termination date stated in County's notice. Failure to submit final invoice within this time may result in delayed or no payment.

### **C. Termination due to non-appropriation**

The County may terminate this contract in whole or part by providing written notice to Contractor of the unavailability of Federal, State, or County funds as soon as is reasonably possible after County learns of the unavailability of funding. Termination due to non-appropriation will be considered termination for convenience.

### **D. Deliverables under Early Termination**

If the contract involved provision of software as a service or hosting an application on which the County has stored data, the County retains the right to continue to access and use the services or application under the contract and each applicable Service Order for a period of twelve months from the effective date of termination, at the rates in place at the time of termination.

### **E. Assignment of Subcontracts upon Termination of Contract**

On termination of the contract, the County, at its sole discretion, may require Contractor to assign its rights under any subcontracts and purchase orders to the County, which assignment will

become effective upon written notice by the County to the Contractor specifying the subcontracts or purchase orders subject to the assignment.

**F. Release of Claims**

Upon acceptance of payment in the amount agreed upon as full and final payment, Contractor releases the County from all further claims arising out of this contract or its termination.

**X. ASSIGNMENT AND SUBCONTRACTING**

**A. County Consent Required**

Contractor may not assign, sublet, or otherwise transfer this contract, or any obligations, rights, or interests in it, without County's prior written consent. However, claims for money due Contractor under this contract may be assigned to a bank, trust company, or other financial institution without County's approval.

**B. Responsibility for Subcontractors**

1. Contractor will be as fully responsible to the County for the acts of the Subcontractor and persons employed by the Subcontractor as for the acts and omissions of persons directly employed by Contractor.
2. Nothing contained in this contract creates any contractual relationship between any Subcontractor and the County, nor makes any Subcontractor a third party beneficiary of this contract.
3. All subcontracts in excess of \$25,000.00 entered into as a result of this Contract, whether by Contractor or another subcontractor, must contain all of the provisions stipulated in this contract to be applicable to the subcontractor.

**C. Addition or Substitution of Subcontractors**

A subcontractor may be substituted only if the original Subcontractor approved by the County is unavailable, unwilling, or unable, to perform, and the County approves the new subcontractor in writing.

**XI. PREVAILING WAGE RATES**

**A. State and Federal General Prevailing Wage Rates**

Goods and services provided under the contract will be subject to payment of prevailing wages if both of the following apply:

1. The contract is over \$1,000; and
2. Work under the contract includes tasks that may be classified as "public work" under §1720 of the California Labor Code.

Prevailing wage rates may be obtained at: [www.dir.ca.gov/Public-Works/PublicWorks.html](http://www.dir.ca.gov/Public-Works/PublicWorks.html)

**B. Department of Industrial Relations (DIR) Registration**

Contractors working on projects that involve "public work" must register annually with the California Department of Industrial Relations. Contracts with Contractors or Subcontractors who are unregistered or whose registrations have expired are subject to termination.



## **XII. QUALITY AND PERFORMANCE STANDARDS**

### **A. Products in Current Stock**

Unless excepted by the County, the manufacturer may not have issued any notice of intent to cease support of any product provided to the County within twelve months of its delivery.

### **B. Product Substitutions during Contract Period**

1. During the contract period, substitution for any product pre-approved by the County is not permitted without written permission from the County.
2. If a manufacturer discontinues producing an awarded product subsequent to contract award, the County may accept a substitute product if it:
  - i. Meets or exceeds the specifications of the awarded product; and
  - ii. Is offered at the price awarded.

### **C. References to Standards and Codes**

Whenever references are made to standards or codes in accordance with which goods are to be manufactured or tested, the edition or revision of the standards or codes current on the effective date of this contract will apply unless otherwise expressly stated. In case of conflict among any referenced standards and codes, or between any referenced standards and codes and the specifications supplied by the County, the latter will govern.

## **XIII. NO WAIVER**

County's review, approval, acceptance, or payment for any deliverables required under this contract is not a waiver of any rights or of any cause of action arising out of the contract, nor a waiver of any subsequent breach of the same or any other provision of this contract, nor does any delay or omission on the part of County to avail itself of any right it may have operate as a waiver of any right or remedy.

## **XIV. CONFLICT OF INTEREST**

### **A. Organizational and Financial Conflicts of Interest**

1. A contractor is eligible for award of contracts by the County so long as the contract in question does not create an actual, potential, or apparent financial or organizational conflict of interest.
2. If requested by the County, Contractor's employees must sign agreements regarding confidentiality and/or conflicts of interest, submit to additional background check requirements, or submit forms disclosing financial interests.

### **B. Attempts to Influence Government Decisions**

Contractor may not use or attempt to use its position to influence a governmental decision in which Contractor has reason to know it has a financial interest other than the compensation promised by this contract.

### **C. Exchange of Gifts with the County**

Contractors, Subcontractors, and their agents currently doing business with or planning to seek contract awards from the County may not offer gifts to the County officers, employees, agents or

board members, or engage a third party to offer gifts, whether or not such gifts are designed to influence award of this or any other contract.

**D. Restrictions on Participation**

No elected officials of the County, the State of California, or the United States Government, nor any officer or employee of the County may become directly or indirectly interested in or personally benefit from the financial proceeds of this contract or any part of it.

**XV. WARRANTIES**

The Contractor warrants the following:

**A. General Fitness of Products for Use**

1. All supplies, equipment and materials provided under this contract will be satisfactory for their intended purposes and free from liens or other encumbrances.
2. All goods, materials, and equipment provided will be free from defects in design, material and workmanship, and any defective goods, materials, or equipment will be redesigned, repaired, or replaced within a time period and in a manner acceptable to the County, provided that notice of the defect is given to Contractor within the applicable Warranty Period.
3. Items will not be deemed defective if they fail to operate due to exposure to any condition in excess of those published in the applicable specifications.
4. A warranty will be void as to a particular item if that item is altered or a repair is attempted or made by any party other than the Contractor without written authorization by the Contractor or otherwise pursuant to the terms of this contract.

**B. Software**

All software delivered, whether embedded in equipment or specifically designed for use with such equipment, must substantially provide the functions set forth in the applicable specifications. Contractor will, at its option and without additional charges, revise or replace nonconforming software, provided that:

1. Software or the medium has not been exposed to any computer virus or to any condition in excess of those published in the applicable specifications;
2. The software has been installed and the host medium operated in accordance with Contractor's written instructions; and
3. Neither the software nor its host medium has been altered by a party other than Contractor.

**C. Warranty Repair**

1. Unless otherwise agreed, no later than one Business Day after being notified by the County of a defect or failure, Contractor will provide comprehensive and continuing warranty repair and restoration from defects in material and workmanship of any deliverable during the Warranty Period, and assign to the County any warranty from a Subcontractor or supplier that exceeds this period.
2. Replacement parts and repairs are subject to County approval, and all redesigned, repaired, or replaced work is warranted against defective design, materials, and workmanship for the

remainder of the Warranty Period of the replaced Deliverable or six months from the County's acceptance of the warranty work, whichever occurs later.

3. All costs associated with redesign, repair, removal, transportation, and replacement, as well as any testing that the County may require, are Contractor's sole responsibility.
4. The County will have the right to the continued use of any goods, equipment, systems, and work deemed defective or unsatisfactory until they can be taken out of service pursuant to Contractor's corrective work.

**D. Warranty Rights and Remedies Non-Exclusive**

The Warranty rights and remedies of the County stated above are not exclusive and do not preclude the exercise of any other rights or remedies provided for in this contract or otherwise.

**XVI. TRAINING**

Training of County staff, if required, will be provided as directed in the Scope of Work. If training dates and locations were not scheduled before release of this solicitation, the County will identify the training locations, dates, and number of people to be trained no less than 14 calendar days before such dates.

**XVII. HAZARDOUS SUBSTANCES**

Deliveries of materials known or believed to contain hazardous substances must include Safety Data Sheets. Such materials include any dangerous, toxic or hazardous pollutants, chemicals, wastes or substances, including, without limitation, those so identified pursuant to CERCLA or any other federal, state or local laws and regulations, or which are or become prohibited, limited or regulated by any governmental authority.

**XVIII. NOTICES**

**A. Method of Notice**

Unless otherwise agreed, all notices, requests, claims, demands and other communications between the parties must be in writing and may be given by either:

1. Delivery in person or by a nationally recognized courier service. Courier notices must be addressed to the County Mailing Address as directed on the IFB and to Contractor as shown in the Contractor Information Form, or to such other address as either party may specify in writing; or
2. Email to the authorized contact for the respective party.

**B. Receipt of Notice**

1. Notice will be deemed given
  - i. On receipt by the party to which the notice is given if physical delivery is made; or
  - ii. On the date and time of the email of the sending party if electronic delivery is made.
2. Notwithstanding the above, if notice is received by the County after 5:00 p.m. PST, or on other than a Business Day, it will be deemed given on the following Business Day.

## **XIX. CIVIL RIGHTS, NONDISCRIMINATION**

### **A. General Non-discrimination**

Except as limited by the Scope of Work, no person may be denied any services provided pursuant to this contract on the grounds of race, color, national origin, ancestry, age, disability, sex, sexual orientation, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status, medical condition, military service, or genetic information.

### **B. Equal Employment Opportunity**

Contractor's equal employment policies must be made available to County upon request, and must ensure equal employment opportunities based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this contract.

### **C. Section 504 of the Rehabilitation Act of 1973**

A contractor providing services to members of the public under this contract must comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability may, solely by reason of a disability, be subjected to discrimination in the performance of any services under this contract.

### **D. Compliance with County's Equal Benefits Ordinance**

Contractor will comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including laws prohibiting discrimination in the provision of benefits on the basis that the spouse or domestic partner is of the same or opposite sex as the employee.

### **E. Discrimination against Individuals with Disabilities**

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this contract as if fully set forth, and Contractor and any Subcontractor will abide by those requirements. The regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance qualified individuals with disabilities.

### **F. History of Discrimination**

Contractor certifies that no finding of discrimination has been issued against Contractor in the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any findings of discrimination have been issued against Contractor within the past 365 days, Contractor will provide County with a written explanation of the outcomes prior to execution of this contract. Failure to comply with this Section will constitute a material breach of this contract and subject the contract to immediate termination at the sole option of the County.

### **G. Reporting; Violation of Non-discrimination Provisions**

Report to the County Manager the filing of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the contract or the Section titled "Compliance with Laws" within 30 days of the filing in any court or administrative agency, provided that within the 30 days the entity has not notified Contractor that such charges are dismissed or otherwise unfounded.

Notification must include a general description of the circumstances involved and a general description of the kind of discrimination alleged (e.g., gender, religion, race-based).

Violation of the non-discrimination provisions of this contract will be considered a breach of this contract and subject the Contractor to penalties, to be determined by the County Manager, which may include:

1. Termination of this contract;
2. Disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;
3. Liquidated damages of \$2,500 per violation; and/or
4. Imposition of other contractual and civil remedies and sanctions.

To effectuate the provisions of this Section, the County Manager will have the authority to offset any portion of amounts due to Contractor under this contract or any other agreement between Contractor and County.

## **XX. COMPLIANCE WITH LIVING WAGE ORDINANCE**

If this is a “covered contract” under Chapter 2.88 of the San Mateo County Ordinance Code, all contractors and subcontractors obligated under this contract must fully comply with the provisions of that chapter, paying all Covered Employees, as defined in that chapter, the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Ordinance.

## **XXI. COMPLIANCE WITH COUNTY EMPLOYEE JURY SERVICE ORDINANCE**

If the value of this contract is over \$100,000.00, or is increased to that amount or more, Contractor must comply with Chapter 2.85 of the San Mateo County Ordinance Code and will have and adhere to a written policy providing that its full-time employees living in San Mateo County will receive no fewer than five days of regular pay for jury service in San Mateo County annually.

If Contractor has no employees in San Mateo County, it is sufficient to provide the following written statement to County: “For purposes of San Mateo County’s jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its contract with San Mateo County, Contractor will adopt a policy that complies with Chapter 2.85 of the County’s Ordinance Code.”

## **XXII. COMPLIANCE WITH LAWS**

Contractor will comply with all Federal, State, and local laws, ordinances, and executive orders applicable to this Contract and will ensure that all Deliverables conform to all applicable Federal, State, and local laws and requirements.

## **XXIII. DISCLOSURE OF INFORMATION**

### **A. Confidential Information**

Contractor may not use for financial gain, disclose, or make other improper use of Confidential Information, information not generally known, or any otherwise privileged information acquired from County in connection with this contract.

**B. Protection of Confidential Information**

All County data and information designated as confidential and made available to Contractor must be protected by Contractor from unauthorized use and disclosure.

**C. Disclosure Required by Law**

Contractor may disclose information when required by law, rule, regulation, or court order, upon notice to the County sufficient to allow the County to challenge such required disclosure.

**D. Data Retention and Disposal**

On contract termination, Contractor must return to County or destroy and erase all originals and copies of all documents, materials and other embodiments in any medium that contain or are based on County Confidential Information from all systems Contractor uses or controls, including any deliverables returned to Contractor by the County. Contractor will provide a written statement to the County certifying compliance with the requirements of this subsection.

**E. Subcontract Disclosure Requirements**

Any subcontract entered into as a result of this contract must contain all of the foregoing provisions related to disclosure of information.

**XXIV. INSPECTIONS, RECORDS, AND AUDITS**

Authorized representatives of the County, the State, or any agency of the federal government having jurisdiction under laws or regulations applicable to this contract will have the right to examine and audit all books, records, documents, and accounts related to this contract, for five years from the date of final payment or disposal of all litigation or claims related to the contract, whichever is later. Requested records and documents must be provided to the relevant government agency at no charge.

If information is in the exclusive possession of another party who fails to furnish the information, certification from Contractor detailing efforts taken to obtain the information may be acceptable.

This Section regarding inspection, records, and audit must be included in any subcontract entered into as a result of this contract.

**XXV. INTELLECTUAL PROPERTY**

**A. Infringement**

Contractor will defend all suits or claims for infringement of any intellectual property rights and will save and hold the County, its agents, and assigns harmless from loss, cost, and expense resulting from the County's, its employees, or its agents use of any Deliverables. This provision does not apply to any infringement or alleged infringement that is the result of or arises because the County, its employees, or its agents modified or altered any part or component of the Deliverables, except as consented to by Contractor.

**B. Intellectual Property Resulting from Creation of Deliverables**

Prior to commencing any work that includes the development of intellectual property as a Deliverable, Contractor must identify in writing any pre-existing intellectual property that will be used in the development of the new intellectual property Deliverable and that will not become property of the County. Unless otherwise agreed, all Deliverables produced under this contract will become the property of the County, and all rights, including intellectual property rights that arise

from the creation of Deliverables or other work products developed for the County will be vested in the County and Contractor relinquishes all claims to such rights in favor of the County.

**C. Ownership of Documents and Data**

Any data generated by or stored by or in the Deliverables, including user information and access, is the sole property of the County.

**XXVI. FORCE MAJEURE**

**A. Non-performance**

1. Neither party will be liable for failure to perform if the non-performance results from Force Majeure. Any excuse for non-performance due to such an event will last only as long as the event remains beyond the reasonable control of the non-performing party.
2. Should Contractor fail to perform due to Force Majeure, the County may suspend its own performance until Contractor resumes performance. If Contractor's failure to perform continues for over five Business Days, the County may terminate this contract or extend any date specifically designated for Contractor's performance.

**B. Non-Exclusions**

1. Force Majeure does not modify Contractor's obligations regarding indemnification, confidentiality, redundancy, data backup, disaster recovery, non-performance by Subcontractors, or responsibility for any malware or code introduced or permitted to be introduced by Contractor or any Subcontractor that results in damage to, unauthorized access to, or prevention of any authorized user's access to County Data or systems.
2. Force Majeure does not include increased cost of performance or failure of Contractor's source of supply.

**XXVII. ENTIRE AGREEMENT**

This contract represents the entire understanding of the County and Contractor. No prior oral or written agreement, promise, understanding, or representation not expressly stated in this document is binding on the parties or is of any force or effect. No document generated by Contractor, except as required to be included in the Bid Documents, may alter the terms of this contract. All modifications or amendments must be in writing and signed by the parties.

**XXVIII. LANGUAGE OF THE CONTRACT**

Unless otherwise stated, all directions and imperatives in these documents are understood to be requirements for the Contractor. Captions and titles in this solicitation and accompanying documents are for convenience and reference only and do not affect the meaning or construction of any provision.

**XXIX. CONTROLLING LAW AND VENUE**

The validity, interpretation, performance, and all rights and duties of the parties under this contract, and any dispute of any nature arising out of this contract, will be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this contract will be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

**XXX. UNENFORCEABLE PROVISIONS**

Should any provision of this contract be found invalid or unenforceable, the decision will affect only the provision interpreted, and all remaining provisions will be severable and enforceable.

**XXXI. SIGNATURES**

This contract may be executed in any number of separate counterparts, each of which will be deemed an original but all of which when taken together will constitute one and the same instrument.

Both County and Contractor wish to permit this contract and future documents relating to this contract to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this contract may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this contract.