COUNTY OF SANTA CLARA, CALIFORNIA

REQUEST FOR PROPOSAL #RFP-PRO-FY15-0164
FOR
RENTAL OF THERAPEUTIC SUPPORT SURFACES AND BARIATRIC BEDS
October 29, 2014

PROPOSALS DUE:
December 3, 2014 by 3:00 PM Pacific Time

PROCUREMENT DEPARTMENT
2310 NORTH FIRST STREET, SUITE 201
SAN JOSE, CA 95131-1040

CONTACT: JUDY TANG
408-491-7481
JUDY.TANG@PRC.SCCGOV.ORG

OPTIONAL PRE-PROPOSAL CONFERENCE
10:00 AM – 11:00 AM Pacific Time, Wednesday, November 5, 2014

LOCATION:
Procurement Department
County of Santa Clara
Aspen Conference Room
2310 North First Street, 2nd Floor, San Jose, CA 95131
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**APPENDICES**

All applicable Appendices must be submitted with the proposal.

APPENDIX A - OPERATIONAL REQUIREMENTS RESPONSE FORM

APPENDIX B - PROPOSAL COST RESPONSE FORM

APPENDIX C - NON-COLLUSION DECLARATION

APPENDIX D - DECLARATION OF LOCAL BUSINESS

APPENDIX E - OFFEROR’S TERMS AND CONDITIONS

**ATTACHMENTS**

The attachments listed below are the requirements and do not have to be submitted with the proposal.

ATTACHMENT A - SAMPLE AGREEMENT TERMS AND CONDITIONS

ATTACHMENT B-2 - INSURANCE REQUIREMENTS

ATTACHMENT C - SUPPLEMENTAL TERMS AND CONDITIONS

ATTACHMENT D - SUPPLIER’S RETURN POLICY

ATTACHMENT E - BUSINESS ASSOCIATE AGREEMENT

ATTACHMENT F - LIST OF THERAPEUTIC SUPPORT SURFACES AND BARIATRIC BEDS
I. INTRODUCTION

A. INVITATION

The County of Santa Clara (hereafter, County) is requesting proposals from qualified vendors to provide rental of therapeutic support surfaces and bariatric beds to meet the need for patients requiring pressure relief and to meet the needs of bariatric patients for Santa Clara County (County), San Jose, California, for its Hospital (Santa Clara Valley Medical Center), and other programs. The proposal should include delivery, training, service support and reporting.

The County may, at its option, award contract to one source or multiple sources. The term of the contracts shall be five years, unless terminated earlier or otherwise amended.

B. BACKGROUND

1. Santa Clara Valley Health and Hospital System

The County of Santa Clara operates Santa Clara Valley Health and Hospital System (SCVHHS) which is comprised of Santa Clara Valley Medical Center (“SCVMC”), Ambulatory and Community Health Services (“ACHS”), and Custody.

2. SCVMC

SCVMC is a 574-bed acute care public teaching hospital affiliated with Stanford University Medical School and provides a full range of inpatient, emergency, rehabilitation, neonatal, intensive care, high-risk maternity care, psychiatry, pediatric intensive care, and burn intensive care services. The Ambulatory outpatient services include both primary and specialty clinics located not only at VMC, but also at satellite facilities located throughout the County.

3. Central Sterile Processing Department

The Central Sterile Processing Department (“CSPD”) sterilizes the reusable instruments that the O.R., and the entire Hospital system, including satellite
facilities uses. CSPD also issues movable medical equipment and Bariatric beds. The ultimate goal of CSPD is to provide quality results to ensure patient and employee safety in an efficient manner. The quality results means that CSPD must ensure the sterility of all instruments and equipment that leave CSPD to avoid causing nosocomial infections, hospital acquired illness or disease. Use proper decontamination and sterilization methods to process contaminated surgical instruments trays, scopes and other surgical equipment. In doing so, ensure the safety of the staff and patients. CSPD must keep detailed records of every sterilization load along with the results of the Biological monitoring and tests that accompany them.

4. **Respiratory Care Services Department**

The Respiratory Care Services Department (“RCSD”) at SCVMC maintains critical care services to any of the 7 intensive care units including Burn, Pediatrics, Neonatal (level III), Coronary, Surgical, Trauma or Medical ICU. RCSD also has a very progressive Spinal Cord Rehabilitation Unit, Traumatic Brain Injury Unit, Transitional Care Unit, level 1 Trauma center and a very active Emergency Room. RCSD utilizes state of the art technology in its equipment as well as Therapist Driven Protocol for adults and pediatrics in the emergency room and throughout the hospital. RCSD standardized to the Maquet ServoI in each of ICU’s, currently averaging 39 ventilators per day as well as actively using Intrapulmonary Percussive Ventilation (IPV) and the Volumetric Diffusive Respirator (VDR4), a high frequency ventilator used from neonates to adults. RCSD is also actively involved in high risk deliveries, nitric oxide administration, Heli-ox administration and neonatal transports. RCSD performs an average of 721 procedures per day and document and submits electronic billing utilizing the MediServe clinical information system.

5. **Current Utilization of Therapeutic Support Surfaces & Bed Rentals at VMC**

To meet the need for patients requiring pressure relief, the Sterile Processing department rents the appropriate therapeutic support surface or bed from our existing vendor. The total number of units rented (surfaces/mattresses and beds) is 592 annually, which represents 6,287 billing days. Utilization is coordinated by the Wound/Skin Care Nurse Specialist.

To meet the needs of bariatric patients, the Sterile Processing department rents the appropriate bed from one of our two existing vendors. The total
number of units (beds) rented is 310 annually which represents 2,050 billing days. Utilization is coordinated by the Wound/Skin Care Nurse Specialist.

C. **PROJECT SCOPE OF WORK**

The scope of work shall include, but not limited to the following:

The hospital-owned beds upon which the vendor's therapeutic support surfaces would be placed are older Hill-Rom bed frames: Care Assist, and Century Model 840. The recommended width of the mattress for these beds is between 34" - 36". The equipment (support surfaces/mattresses) provided by the vendor are required to fit appropriately onto these bed frames.

The proposed equipment shall provide the functionality of the existing equipment or equal. The list of features that represent the minimum requirement is displayed in Appendix A, Operational Requirements.

A summary listing of the items required for the rental program for our 574 bed Hospital is as follows:

- **Therapeutic Support Surfaces:**
  - Mattress, Low Air Loss
  - Mattress, Low Air Loss / Pulmonary Therapy
  - Bed, Air Fluidized. Therapy

- **Bariatric Beds:**
  - Bed, Low Air Loss
  - Bed, Low Air Loss / Pulmonary Therapy
  - Bed (foam mattress)

Refer to Attachment F for a complete listing of items, including the utilization breakdown.

Delivery is required within 4 hours of the order placement phone call. Services are required 24 hours a day, seven (7) days a week, including County holidays. Return pick-up is required within 4 hours of the return phone call.

The County’s rental of therapeutic support surfaces and bariatric beds requirements are based on operational needs and shall be expected to vary in volume and capacity. It is the responsibility of the Contractor to accommodate the varying volume and capacity accordingly. Almost every department in SCVHHS uses rental of therapeutic support surfaces and bariatric beds. It is the responsibility of the Contractor to provide rental of therapeutic support surfaces
and bariatric beds to Sterile Processing Department, Respiratory Department, and the other departments within SCVHHS.

D. PROCUREMENT OFFICER/POINT OF CONTACT

The County has designated a Procurement Officer who is responsible for the conduct of this procurement whose name, address, and telephone number are listed below:

   Judy Tang, Procurement Contracts Specialist
   Procurement Department
   County of Santa Clara
   2310 N. First Street, Suite 201
   San Jose, CA 95131-1040

   Telephone: 408-491-7481
   E-mail: Judy.Tang@prc.sccgov.org

Any inquiries or request regarding this procurement should be submitted to the Procurement Officer in writing. Offerors may contact ONLY the Procurement Officer regarding this procurement. Other County employees do not have the authority to respond on behalf of the County.
II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the anticipated schedule for the procurement and describes the procurement events as well as the conditions governing the procurement.

A. SEQUENCE OF EVENTS AND CONTACT INFORMATION

The Procurement Officer will make every effort to adhere to the following anticipated schedule:

<table>
<thead>
<tr>
<th>Action</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Issue of RFP</td>
<td>10/29/2014</td>
</tr>
<tr>
<td>2. Pre-proposal Conference</td>
<td>11/5/2014 from 10:00 am – 11:00 am Pacific Time</td>
</tr>
<tr>
<td>3. Deadline To Submit Written Questions</td>
<td>11/12/2014</td>
</tr>
<tr>
<td>4. Response to Written Questions/RFP Addendum</td>
<td>11/21/2014 by 5:00 p.m. Pacific Time</td>
</tr>
<tr>
<td>5. Submission of Proposals</td>
<td>12/3/2014 by 3:00 p.m. Pacific Time</td>
</tr>
<tr>
<td>7. Selection of Shortlist</td>
<td>12/29/2014</td>
</tr>
<tr>
<td>8. Demonstrations/Presentations (County option, if applicable)</td>
<td>Week of January 5, 2015</td>
</tr>
<tr>
<td>9. Selection of Finalist for Negotiation</td>
<td>1/12/2015</td>
</tr>
<tr>
<td>10. Final Negotiations, BAFO, finalize contract and award contract</td>
<td>1/19/2015-3/18/2015</td>
</tr>
<tr>
<td>11. Commence Work</td>
<td>4/1/2015</td>
</tr>
</tbody>
</table>

B. EXPLANATION OF EVENTS

1. ISSUE OF RFP

This RFP is being issued by the County Procurement Department. Copies of this RFP including supporting documents may be obtained from Bidsync’s web site at www.bidsync.com.

2. PRE-PROPOSAL CONFERENCE
A pre-proposal conference will be held on the date and time listed in Section II, Paragraph A. The conference will be held at the following location:

Procurement Department  
County of Santa Clara  
Aspen Conference Room  
2310 North First Street, 2nd Floor, San Jose, CA 95131

For those unable to attend in person, a teleconference conference line is available: dial 1-866-249-5279 and enter access code of 559951.

Potential Offerors are encouraged to submit written questions in advance of the conference to: Judy Tang at Judy.Tang@prc.sccgov.org

The identity of the organization submitting the question(s) will not be revealed. Additional written questions may be submitted at the conference. All written questions will be addressed at the conference.

Attendance at the pre-proposal conference is recommended but is not a prerequisite for submission of a proposal.

3. DEADLINE TO SUBMIT ADDITIONAL WRITTEN QUESTIONS

Potential Offerors may submit written questions as to the intent or clarity of this RFP until the deadline as indicated in Section II, Paragraph A. The Procurement Officer will not respond to questions submitted in any other manner or format.

Additional written requests for clarification of distributed answers and/or addendums must be received by the Procurement Officer no later than three (3) days after the answers and/or addendums are posted on www.bidsync.com.

4. RESPONSE TO WRITTEN QUESTIONS/RFP ADDENDUM

Written responses to written questions, and any changes to the RFP, will be issued as an addendum, and posted on www.bidsync.com. The
County reserves the right to post addenda until the RFP closing date and time.

5. **SUBMISSION OF PROPOSAL**

PROPOSALS MUST BE RECEIVED NO LATER THAN THE DEADLINE SPECIFIED IN SECTION II, PARAGRAPH A. Proposals are to be received at the time and place listed below. All received proposals will be time stamped.

All deliveries via express carrier should be addressed as follows:

Judy Tang, Procurement Contracts Specialist  
– RFP #RFP-PRO-FY15-0164  
Procurement Department  
County of Santa Clara  
2310 N. First Street, Suite 201  
San Jose, CA 95131-1040

Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the RFP #RFP-PRO-FY15-0164 and title as referenced on the cover page.

C. **GENERAL**

1. **INCURRING COST**

This RFP does not commit the County to award, nor does it commit the County to pay any cost incurred in the submission of the Proposal, or in making necessary studies or designs for the preparation thereof, nor procure or contract for services or supplies. Further, no reimbursable cost may be incurred in anticipation of a contract award.

2. **CLAIMS AGAINST THE COUNTY**

Neither your organization nor any of your representatives shall have any claims whatsoever against the County or any of its respective officials, agents, or employees arising out of or relating to this RFP or these procedures (other than those arising under a definitive Agreement with your organization in accordance with the terms thereof).
3. **GUARANTEE OF PROPOSAL**

Responses to this RFP, including proposal prices, will be considered firm and irrevocable for one-hundred and eighty (180) days after the due date for receipt of proposals or one-hundred eighty (180) days after receipt of a best and final offer, if one is submitted.

4. **BASIS FOR PROPOSAL**

Only information supplied by the County in writing or in this RFP should be used as the basis for the preparation of Offeror’s proposal.

5. **FORM OF PROPOSALS**

No oral, telephone, facsimile or electronic proposals will be accepted.

6. **AMENDED PROPOSAL**

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. The County personnel will not merge, collate, or assemble proposal materials.

7. **WITHDRAWAL OF PROPOSAL**

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request signed by the Offeror’s duly authorized representative addressed to the Director of Procurement.

8. **LATE RESPONSES**

All proposals submitted in response to this RFP must be delivered in person or received via courier or mail no later than the RFP due date and time. The Procurement Department time and date stamp will be the basis of determining receipt of proposal.

9. **NO PUBLIC PROPOSAL OPENING**
There will be no public opening for this RFP.

10. **CALIFORNIA PUBLIC RECORDS ACT (CPRA)**

All proposals become the property of the County, which is a public agency subject to the disclosure requirements of the California Public Records Act (“CPRA”). If Contractor proprietary information is contained in documents 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’s deadline for responding to the CPRA request. If Contractor fails to obtain such remedy within County’s deadline for responding 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 attorneys 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.

11. **CONFIDENTIALITY**

All data and information gathered by the offeror and its agents in this RFP process, including reports, recommendations, specifications and data, shall be treated by the offeror and its agents as confidential. The offeror and its agents shall not disclose or communicate this information to a third party or use it in advertising, publicity, propaganda, or in another job or jobs, unless written consent is obtained from the County. Generally, each proposal and all documentation, including financial information, submitted by an offeror to the County is confidential until a contract is awarded, when such documents become public record under state and local law, unless exempted under CPRA.
12. **ELECTRONIC MAIL ADDRESS**

Most of the communication regarding this procurement will be conducted by electronic mail (e-mail). Potential offerors agree to provide the Procurement Officer with a valid e-mail address to receive this correspondence.

13. **USE OF ELECTRONIC VERSIONS OF THE RFP**

This RFP is being made available by electronic means. If accepted by such means, the offeror acknowledges and accepts full responsibility to insure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Offeror’s possession and the version maintained by the Procurement Department the version maintained by the Procurement Department must govern.

14. **COUNTY RIGHTS**

The County reserves the right to do the following at any time:

a. Reject any or all proposal(s), without indicating any reason for such rejection.

b. Waive or correct any minor or inadvertent defect, irregularity or technical error in a proposal or the RFP process, or as part of any subsequent contract negotiation.

c. Request that Offerors supplement or modify all or certain aspects of their proposals or other documents or materials submitted.

d. Terminate the RFP, and at its option, issue a new RFP.

e. Procure any equipment or services specified in this RFP by other means.

f. Modify the selection process, the specifications or requirements for materials or services, or the contents or format of the proposals.

g. Extend a deadline specified in this RFP, including deadlines for
accepting proposals.

h. Negotiate with any or none of the Offerors.

i. Modify in the final agreement any terms and/or conditions described in this RFP.

j. Terminate failed negotiations with an offeror without liability, and negotiate with other Offerors.

k. Disqualify any offeror on the basis of a real or apparent conflict of interest, or evidence of collusion that is disclosed by the proposal or other data available to the County.

l. Eliminate, reject or disqualify a proposal of any offeror who is not a responsible Offeror or fails to submit a responsive offer as determined solely by the County.

m. To accept all or a portion of an Offeror’s proposal.
III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Offerors shall submit only one proposal.

B. NUMBER OF COPIES

Offerors must provide one (1) original and seven (7) identical copies of their proposal to the location specified on or before the closing date and time for receipt of proposals.

The original must be stamped “original” and contain original signatures on the necessary forms. The remaining sets should be copies of the originals.

Offerors must also provide one (1) electronic copies of their proposal in CD-ROM format, prepared using Microsoft Office 2003, Word, Excel and Project. The CD shall be included in the original binder.

C. PROPOSAL FORMAT

All proposals shall be typewritten on standard 8 ½ x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section. Hard copies should utilize both sides of the paper where practical.

1. LETTER OF TRANSMITTAL

Each proposal received must include a letter of transmittal. The letter of transmittal MUST:

a. Identify the submitting organization;

b. Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized by the organization to contractually obligate the organization;
c. Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized to negotiate the contract on behalf of the organization;

d. Identify the names, titles, telephone and fax numbers, and e-mail addresses of persons to be contacted for clarification;

e. Be signed by the person authorized to contractually obligate the organization

f. Acknowledge receipt of any and all addenda to this RFP; and identify all sections of the proposal that the Offeror claims contain “proprietary” or “confidential” information.

2. PROPOSAL ORGANIZATION

The proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated:

Tab 1: Letter of Transmittal
Tab 2: Table of Contents
Tab 3: Section V A, Items 1 – 6, Offeror Submittal
Tab 4: Appendix A – Operational Requirements Response Form
Tab 5: Appendix C - Non-collusion Declaration form
Tab 6: Appendix D - Declaration of Local Business, if applicable.
Tab 7: Appendix E - Offeror’s Terms and Conditions
Tab 8: Magnetic Media (CDs)

Appendix B- Proposal Cost Response Form

The original forms must be submitted in a sealed envelope marked “Original Appendix B” In addition, submit seven (7) copies in a separate sealed envelope marked “Copies of Appendix B”

3. PROPOSAL PREPARATION INSTRUCTIONS

Within each section of their proposal, Offerors should address the items in the order in which they appear in this RFP. All forms provided in the RFP shall be thoroughly completed and included in the appropriate section of the proposal.
4. **NON-CONFORMING SUBMISSIONS**

Any submission may be construed as a non-conforming Proposal and ineligible for consideration if it does not comply with the requirements of the Request for Proposal. Failure to comply with the technical features, and acknowledgment of receipt of amendments, are common causes for holding a Proposal non-conforming. **AT THE COUNTY’S SOLE DISCRETION NON CONFORMING PROPOSALS MAY BE REJECTED OR THE PROPOSAL OVERALL RATING MAY BE DOWNGRADED.**
IV. EVALUATION

A. EVALUATION FACTORS

The Evaluation Criteria listed below will be utilized in the evaluation of the Offeror’s written proposals and demonstration/presentation accordingly. The expectation is that those proposals in the competitive range may be considered for contract award. The proposal should give clear, concise information in sufficient detail to allow an evaluation based on the criteria below. An Offeror must be acceptable in adherence to the RFP for a contract to be awarded to that Offeror whose proposal provides the best value to the County.

a. Adherence to this RFP.

b. Corporate strength, experience, financial strength, references and reputation of Offeror;

c. Ability to meet the operational requirements in Appendices A and B;

d. Local Business Preference.

The overall total cost to the County will be considered and the degree of the importance of price will increase with the degree of equality of the proposals in relation to the other factors on which selection is to be based.

B. LOCAL BUSINESS PREFERENCE:

In accordance with applicable sections of Board Policy, Section 5.3.13, in the formal solicitation of goods or services, the County of Santa Clara shall give responsive and responsible 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, 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 and/or residential addresses may not be used as the sole bases for establishing status as a “Local Business.”
In the procurement of goods or services in which best value is the determining basis for award of the contract, five percent (5%) of the total points awardable will be added to the Local Business score.

When a contract for goods or services, as defined in this policy, is presented to the Board of Supervisors for approval, the accompanying transmittal letter shall include a statement as to whether the proposed vendor is a Local Business, and whether the application of the local preference policy was a decisive factor in the award of the proposed contract.

This Local Business preference shall not apply to the following:

1. Public works contracts,
2. Where such a preference is precluded by local, state or federal law or regulation,
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 of Supervisors in accordance with County policy, or
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 (Section A34-82).

In order to be considered for Local Preference, proposer must complete and submit Declaration of Local Business with its RFP response.
V. REQUIREMENT OF OFFEROR SUBMITTALS

This section contains requirements and relevant information Offerors should use for the preparation of their proposals. Offerors should thoroughly respond to each requirement.

A. OFFEROR’S CORPORATE INFORMATION

1. EXECUTIVE SUMMARY

Include an executive summary which should be a one or two page summary intended to provide the Evaluation Committee with an overview of the significant business features of the proposal.

2. OFFEROR EXPERIENCE/INFORMATION

The Offeror shall include in their proposal a statement of relevant experience. The Offeror should thoroughly describe, in the form of a narrative, its experience and success, if applicable in providing and/or supporting the proposed rental of therapeutic support surfaces and bariatric beds services.

In addition Offerors shall provide the following information:

   a. Provide the company name, business address, including headquarters, all local offices, co-location locations (city/state), and telephone numbers.

   b. Provide the length of time they have been providing rental of therapeutic support surfaces and bariatric beds services within and outside the County of Santa Clara as specified in this RFP. State years of experience in such area.

   c. Indicate any offices or facilities located within the County of Santa Clara that substantially and directly enhances the Offeror’s ability to perform the proposed contract.

   d. Provide a description of the offeror’s organization, including names of principals, number of employees, client base, areas of specialization and expertise, and any other information that will
assist the Evaluation Committee in formulating an opinion about the stability and strength of the organization.

e. Provide the name of the jurisdiction in which the Offeror is organized and the date of such organization.

f. Identify the location and facility that would provide the proposed rental of therapeutic support surfaces and bariatric beds services. Also include the number of employees and the level of training and years of experience of the employees.

g. Provide a complete disclosure if Offeror, its subsidiaries, parent, other corporate affiliates, or subcontractors have defaulted in its performance on a contract during the past five years which has led the other party to terminate the contract. If so, identify the parties involved and the circumstances of the default or termination.

h. Provide a list of any lawsuits filed against the Offeror, its subsidiaries, parent, other corporate affiliates, or subcontractors in the past five years and the outcome of those lawsuits. Identify the parties involved and circumstances. Also, describe any civil or criminal litigation or investigation pending.

3. **FINANCIAL STABILITY/OFFEROR FINANCIAL INFORMATION**

Offeror shall submit copies of the most recent years independently audited financial statements, as well as those for the preceding three years, if they exist. The submission shall include the audit opinion, balance sheet, income statement, retained earnings, cash flows, and notes to the financial statements. If independently audited financial statements do not exist for the Offeror, the Offeror shall state the reason and, instead, submit sufficient information such as the latest Dun and Bradstreet report to enable the Evaluation Committee to determine the financial stability of the Offeror. The Procurement Officer may request and the Offeror shall supply any additional financial information requested in a timely manner.

4. **PAST PERFORMANCE (REFERENCES)**

Proposer must have a minimum of five (5) years rental of therapeutic support surfaces and bariatric beds service experience.
The Offeror’s proposal shall include three different external references from clients who have completed their projects in the last three years, who are willing to validate the Offeror’s past performance on similar projects of size and scope. References should be provided from clients who have purchased the identical service being currently offered to Santa Clara County and are using it for very similar applications. The minimum information that shall be provided for each client reference includes the following:

1. Name of the contact person;
2. Name of the company or governmental entity;
3. Address of the contact person;
4. Telephone number of contact person;
5. Email address of the contact person;
6. A description of the services provided and dates the services were provided;

5. **INDEMNITY AND INSURANCE REQUIREMENTS**

Offerors shall acknowledge willingness and ability to meet the County insurance requirements and to endorse their insurance policies making the County an additionally insured. Offerors shall provide evidence of insurance coverage within 7 days after receipt of written request from the County.

6. **HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**

Explain if your system meets the Health Insurance Portability and Accountability Act requirements as required in Attachment E.

B. **OPERATIONAL REQUIREMENTS (APPENDIX A)**

The County is seeking a contractor to provide a complete solution to satisfy the operational requirements and one who is capable of providing the stated capacity and service levels required to provide the rental of therapeutic support surfaces and bariatric beds services to the standard in this RFP. The service requirements are to be defined referencing the requirements in Appendix A to the RFP.

Offerors must submit a thorough narrative supported by references to the documentation in response to questions asked in Appendix A.
C. **COST PROPOSAL (APPENDIX B)**

Offerors shall complete all pages of the Proposal Cost Response Forms and submit them in a sealed envelope with their proposal.

D. **OTHER SUBMITTALS**

1. **NON-COLLUSION DECLARATION (APPENDIX C)**

Offerors shall complete and submit with their proposal the Non-Collusion Declaration with their proposals.

2. **OFFEROR’S TERMS AND CONDITIONS (APPENDIX E)**

Should Offerors object to any of the County’s terms and conditions listed in Attachments A, B-2, C, D and E, Offerors must propose specific alternative language and indicate the reason for their objection. The County may or may not accept the alternative language. General references to the Offeror’s terms and conditions or attempts at complete substitutions are not acceptable to the County. Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed changed followed by the specific proposed alternate wording.

In addition, Offerors must submit with their proposal any additional terms and conditions that they expect to have included in the contract negotiated with the County. Offerors must provide specific proposed wording and a brief discussion of the purpose and impact, if any. Include any applicable agreement, such as license, service level, maintenance, etc.
I. SPECIFICATION REQUIREMENTS

1. **Description of Program**

   A. Please describe in detail of the proposed program, including how it will meet or exceed the requirements stated in the entire RFP.

   B. Offerors must identify/list all items that are not supplied directly by the Offeror (any/all third party products).

   C. Please describe in detail the proposed items and their components must conform to all federal standards and guidelines. Clearly state the FDA status of the items. Any FDA noncompliance must be identified and explained in detail.

2. **Transaction Requirements**

   A. Please describe in detail of the transaction requirements, including but not limited to:
      - method of order entry
      - mechanism for pre-delivery confirmation of order
      - mechanism for delivery and pick-up
      - mechanism for sign-off by hospital personnel (upon delivery, upon pick-up)
      - mechanism for billing and invoicing

   B. Turn-around time, the timeframe required from notification/order placement to delivery of the item, is of great importance to VMC. Offerors must state your guaranteed Delivery time in terms of hours after receipt of order: (hours ARO).

   Failure of the vendor to meet the guaranteed Delivery time (following a 1 hour grace period) will result in a per item penalty of $100 per hour assessed for every hour of delay in having the item on-site up to a period of 24 (twenty-four) hours.
   After 24 (twenty-four) hours, the penalty for not having the item on site will be $3,000 per day.
C. Offerors must state your guaranteed Pick-up time in terms of hours after notification of rental discontinuation: (_ hours).

Failure of the vendor to meet the guaranteed Pick-up time (following a 24 hour grace period) will result in a per item penalty of $100 per hour assessed for every hour of delay in having the item picked-up, up to a maximum penalty per item of $2,400.

D. Offeror must provide the average guaranteed telephone response time to a request for service in terms of working minutes after receipt of call for service: (minutes).

E. Offeror must provide the average guaranteed response time in terms of hours for a request for on-site service, e.g., for repairs: ( _ hours).

F. STAT Orders (immediate response required of vendor) will be infrequent, only as required to meet urgent patient care needs. STAT Orders delivery will be available 24 hours, 7 days a week, including holidays. Vendor will be required to deliver within 1 hour of order.

G. In order to help mitigate the volume of STAT orders, up to four (4) "StandBy" items will be located on-site at VMC's Sterile Processing department. There will be no charge for the "Stand-By" items until brought into rental service. Once a "Stand-By" item is brought into rental service, a replacement item will be supplied in the next scheduled delivery.

H. Days utilization for each item will be calculated beginning on the calendar day the vendor delivers the item and continues until the vendor’s service center is notified by VMC that the item is discontinued I no longer required.

I. Please describe in detail the proposed items and their components must conform to all federal standards and guidelines. Clearly state the FDA status of the items. Any FDA noncompliance must be identified and explained in detail.

J. Please describe in detail the proposed items and their components must conform to all federal standards and guidelines. Clearly state the FDA status of the items. Any FDA noncompliance must be identified and explained in detail.
K. Please describe in detail the proposed items and their components must conform to all federal standards and guidelines. Clearly state the FDA status of the items. Any FDA noncompliance must be identified and explained in detail.

L. Please describe in detail the proposed items and their components must conform to all federal standards and guidelines. Clearly state the FDA status of the items. Any FDA noncompliance must be identified and explained in detail.

3. **On-Going Service**

Offeror must include in your proposal a description of the post implementation ongoing follow-up that will be provided. Provide the normal hours and describe the channels (phone, email, web, etc.) for support. Describe how after hours support is provided. Identify the technical and field support staff local to the San Jose area. Outline the qualifications/certifications of the technical support staff.

4. **Conversion / Implementation Plan**

Offeror must provide assurance that sufficient resources would be applied to ensure a smooth conversion should Offeror be awarded. Include a proposed conversion / implementation plan that will lead to the required deliverables. Include the organization of the project management team.

5. **Product Information Materials**

Offeror must provide the Product Information on each item in the proposal, describing the features and options. Also provide the technical specifications on each item, including the operations manual used for training.

6. **Training Plan**

Offeror must describe the plan for training the users on the items (RNs and other staff on the units). Describe the type and scope (round-the-clock as needed) of training that will be provided. The description should include:

i. The methods by which training will be provided, e.g., on-site vs. online;

ii. A recommended training curriculum;

iii. An explanation of how the Offeror will work with the County to determine training needs and tailor the curriculum;
iv. A description of the type of training that will be provided (a) at what stage/phase of a conversion/implementation and (b) as on-going follow-up training after conversion/implementation.

7. **On-Going Training and Clinical Education**

   a. Upon the conversion to or the addition of a new item, the vendor will provide training on the proper operation of the item at no charge to the facility.

   b. Vendor's Clinical Consultant(s) will be available 24 hours, 7 days a week, including holidays to provide input to VMC personnel. On-site consultations will be provided as needed. A routine will be agreed upon for the frequency of the on-site visits; Offeror should propose a minimum number for on-site visits per year.

   c. Offerors should include in the proposal a description of your capabilities in providing clinical education.

   d. Offerors should include in the proposal (a) a description of your capabilities in providing clinical studies applicable to the items in the proposal and (b) an example of a clinical study.

   e. Offerors should indicate whether Clinical Consultant(s) will provide the option of reporting observations of the condition of the owned beds and bedframes (Hill-Rom manufactured) as part of walk-through inspection reporting.

8. **Reporting**

   a. Vendor will provide on a quarterly basis a Prevalence Study for review by the Wound Skin Care Nurse Specialist. Include in the proposal an example of a Prevalence Study.

   b. Vendor will provide a Usage Report on a quarterly basis that displays the total number of units and billing days for each item during each month.

9. **New Items**

   If vendor proposes to introduce a New Item to VMC (an item of significance not covered in the existing agreement) then Procurement will be contacted in advance. Pricing will be negotiated between the vendor and Procurement before the item is rented. Pricing on New Items will be commensurate with the level of discount provided on like items.
10. **Quality Assurance**

a. All items will be thoroughly decontaminated by vendor before delivery and delivered in clean, ready for use condition in compliance with The Joint Commission (TJC), California Health and Safety Codes, or other regulatory requirements. Vendor’s complete Infection Control policy will be made available to VMC personnel upon request.

b. All items provided for use at VMC will have current electrical safety testing to the satisfaction of the VMC Biomedical Engineering department. All items will be labeled in a manner compliant with Cal-DHS requirements.

c. All delivery, set-up, service and maintenance, biomedical safety checks/certifications and emergency repairs will be performed by vendor’s certified technicians. Any routine service will be performed on items prior to being delivered to VMC and any service necessitated by long-term utilization will be arranged at a mutually agreeable time between the Sterile Processing department and the vendor.

d. Any item delivered to VMC that fails to perform according to original manufacturer’s specifications will be so noted by VMC personnel and vendor will be requested to remove/replace it without additional cost to VMC.

11. **Equipment Inventory**

A. Please describe in detail how many of the Equipment described in Attachment F your company is able to provide.

B. Attachment F is the required Equipment and inventory level. Please describe your plans to maintain those levels at your facility.

C. Please describe in detail how you will ensure no substitution of manufacture and no substitution of model number.

D. Please identify equipment warehouse(s) where moveable equipment will be stored both locally, statewide and nationwide.

12. **Equipment Delivery**
E. Please describe in detail how you plan to deliver equipment to County’s designated location in patient-ready condition 24 hours a day, seven (7) days a week, including County holidays.

F. Please describe in detail how you will ensure that equipment will be delivered within 4 hours once order is placed.

G. If a piece of equipment is not available locally (within the four hour delivery time frame), what is the delivery process for delivery of equipment from other warehouses and if needed with next day delivery, and if it is a piece of equipment we have identified as needing to rent in the initial contracting process, all expediting fees are to be waived.

H. Please describe in detail how you will ensure that upon delivery you will provide an equipment transfer or other required documentation for County to sign. And provide a copy of this same equipment transfer document to the Customer receiving this Rental Equipment.

I. Please describe in detail how you will ensure the equipment type, model #, serial number, date, time, who took the order, PO, accessories, etc. are provided on this equipment transfer document for traceability purposes.

J. All requested orders by SCVMC will have to be filled in their entirety on the first scheduled delivery. No partial orders will be accepted on the initial delivery and the balance or backorder delivered within another time frame, unless the volume far exceeds the SCVMC normal usage. If the order cannot be filled in its entirety within the initial delivery the Customer has the option to reject the delivery and has the right to go to the second in line supplier.

Please describe in details how you will meet the requirements mentioned above.

K. Please list any moveable equipment that has a minimum rental period, if any, and what the minimum rental period is (1 day, 1 week, 2 weeks, etc.)

L. Contractor shall provide its delivery personnel with a uniform, badge or some other form of identification that easily identifies that individual as an employee of the contractor. Any employee who fails to meet this requirement may be asked to leave County site(s).
Please describe in details how you will meet the requirements mentioned above.

13. **Equipment Maintenance and Repair**

   A. Please describe in detail how you plan to perform routine Equipment maintenance, calibration and repair.

   B. For critical care ventilators that require yearly or every X thousand hours Preventative Maintenance (“PM”), with how many hours remaining do you perform PM’s (example: PM every 5,000 hours on a Servoi) to ensure that PM’s are completed prior to delivery to facility.

   C. Please describe in detail how you plan to contact Customer and arrange for pick-up of Equipment at least 30 days before the due date for any inspection, preventive maintenance or other required services as indicated on the Equipment.

   D. Please describe in detail how you plan to handle any damages or injury to person or property that may result from the equipment.

   E. Please describe in detail how you plan to make replacement Equipment available while the Equipment that Customer is using is in the process of inspection, preventive maintenance or other required services.

14. **Equipment Inspections**

   A. Please describe in detail how you plan to perform functional and electrical inspections of Equipment in accordance with manufacturer’s guidelines.

   B. Please describe in detail your company’s customary practices and the procedures and intervals listed in your company functional check out procedures.

   C. Please describe in detail your company’s plan to stay in compliance with the applicable standards of The Joint Commission (“TJC”), and the National Fire Protection Association (“NFPA 99”).
D. Please describe in detail your company’s plan to provide a checklist for acceptance.

E. County may inspect the Equipment upon delivery. If such inspection reveals that the Equipment is not in patient-ready condition, County will notify Contractor and Contractor will replace such Equipment, at no cost to County.

Please describe in details how you will meet the requirements mentioned above.

F. Please describe in detail how you will ensure Customer will not move or allow the removal of Equipment from the premises to which it is delivered.

G. Please describe in detail your company’s plan of sending notice to County before you inspect the Equipment.

15. **Equipment Replacement**.

A. Please describe in detail your company’s plan to repair or replace nonfunctioning equipment, aging equipment, or otherwise suspect equipment in your fleet.

B. Please describe in detail your company’s plan to maintain current available equipment inventory for replacement.

C. Please describe in detail your company’s procedure for replacement when equipment or part of any equipment was identified by Customer as nonfunctional.

16. **Invoicing and Reporting**

A. Please describe in detail how your company provides web-based tools to accommodate 24 hour on-demand access to invoices and Equipment reports for all Equipment.

B. Please provide an example of your invoice for monthly weekly and/or daily rentals (or an example if all are the same).
C. Please provide an example of the monthly summary report you intend to provide. Please show variations if applicable.

17. **Quarterly Reviews**

Contractor’s Account Executive, Procurement Representative and Resource Management Representative will meet on a Quarterly basis to review current pricing, usage and all customer service issues.

A. Please describe in detail your company’s plan to provide a “price comparison report against other local county entities” within these Quarterly reviews.

B. Please describe in detail your company’s plan to provide a list of products against Appendix B and ensure a price reduction to match the other local county entity.

C. Please describe in detail how you will ensure that this new pricing will take effect the first of the month directly following this quarterly review.

18. **Equipment Use**

A. Please describe in detail what safeguards do you put in place to ensure Customer use Equipment only for the purpose for which it was intended.

B. Please describe in detail what safeguards do you put in place to ensure Customer do not modify, repair or perform any maintenance of the Equipment.

19. **Equipment Loss or Damage**

A. Please describe in detail your company’s plan to handle loss to Equipment, including accessories by Customer.

B. Please describe in detail your company’s plan to handle damage to Equipment, including accessories by Customer.

C. Please describe in detail your company’s reporting procedure for any loss or damage to Equipment.
20. **Equipment Investigational Analysis**

   A. Please describe in detail your company’s plan for Customer to give notice of the failure of any unit of Equipment to perform in accordance with manufacturer’s specifications when patient injury results.

   B. Please describe in detail your company’s plan to provide procedure and checklist for Customer to give notice that includes sufficient details to permit the parties to collaborate on developing an investigation plan.

   C. Please describe in detail your company’s plan to provide written consent to Customer, before performing or allowing a third party to perform, any investigational analysis or operational verification testing of any Equipment.

21. **Equipment Rental Return**

   A. Please describe in detail your company’s plan for Equipment Pick-up from Customer designated location.

   B. Please describe in detail your company’s plan to sign an equipment transfer or other required documentation upon pick-up of returned Rental Equipment.

   C. Please describe in detail how your company will provide a copy of this same equipment transfer document to the Supplier Representative receiving this returned Rental Equipment and Customer.

   D. For traceability purposes the equipment type, model #, serial number, date, time, who took the order, PO, accessories, etc. are provided on this equipment transfer document. Please provide a sample of this document.

22. **Business Continuity Plan**

   A. Emergency Preparedness and Business Continuity. The Offeror must have an existing emergency contingency plan in the event of business interruption.

   Please describe in detail your company’s business continuity plan. Include the following:
1) In the event of a business interruption or breakdown in standard communications, list the ways your company would communicate with VMC.

2) Describe your company’s experience in responding to natural, technologic, or man-made disasters (e.g., exercise and drills, actual situations, etc.).
APPENDIX B
PROPOSAL COST RESPONSE FORM

Offeror – please complete the applicable sections based upon your proposed system. The proposed cost shall include all fees, including one-time and recurring, and value added options. All fees must be disclosed on this form. **Contractor will affirm that no additional costs, other than those identified below, will be incurred by the County to meet the specification and requirements of this RFP.** If additional space is needed, please use an attachment to this form and include it and this completed form in your proposal.

Offeror shall prepay and absorb all freight or shipping charges.

1) Recurring Cost

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<th>Item Description</th>
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RFP #RFP-PRO-FY15-0164 Rental of Therapeutic Support Surfaces and Bariatric Beds
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2) One-time Cost

3) Value-added Options
A. Please describe in detail how your company will ensure we get the best rate possible, for example, when daily rental accumulate exceeds weekly rate, charge should turn into weekly rate automatically, even when rental is less than seven (7) days.

B. Please describe in detail how your company will ensure we get the best rate possible, for example, when daily or weekly rental exceeds monthly rate, charge should turn into monthly rate automatically, even when rental is less than thirty (30) days.

C. Please describe in detail how your company will ensure we get the best rate possible, for example, when daily, weekly, or monthly rental exceeds cap rate, charge should turn into cap rate automatically.

D. Please describe in detail how your company will ensure rental charge will begin at the time of Customer receiving the equipment.

E. Please describe in detail how your company will ensure rental charge will stop at the time of the return phone call, which means when County calls vendor to return one rental item, the rental charges for that item shall stop.
APPENDIX C
NON-COLLUSION DECLARATION

I, ________________________________ , am the
(Print Name)
_____________________________________ of _____________________________________,
(Position/Title) (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 Offeror has not directly or indirectly induced or solicited any other Offeror to put in a false or sham bid; and has not directly or indirectly colluded, conspired, connived, or agreed with any Offeror or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the Offeror has not in any manner directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the Offeror or any other Offeror, or to fix any overhead, profit, or cost element of the bid price, or of that of any other Offeror, 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 Offeror 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: ____________________________
APPENDIX D

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 5.3.13. A bidder or proposer has the option of qualifying for the preference by self-declaring its qualification as a “local business.” By signing below, the bidder or proposer is certifying its qualification as a “local business” for purposes of application of Santa Clara County’s policy and is deemed to be applying for the local preference.

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.

Provide the complete physical address of your business with meaningful “production capability” located within the boundary of the County of Santa Clara. The term “production capability” means sales, marketing, manufacturing, servicing, or research and development capability that substantially and directly enhances the firm’s/bidder’s/proposer’s ability to perform the proposed contract. Post Office box numbers and/or residential addresses may not be used as the sole bases for establishing status as a “Local Business.” If you have more than one physical address in Santa Clara County, please provide an attachment with all of the addresses in the form specified below.

Business Name: ____________________________

Street: ______________________________________________________________________

City/State: ____________________________ Zip Code: ______________

Please Indicate Business Organization (Check One)

☐ Individual Proprietorship          ☐ Corporation

☐ Partnership                        ☐ Other

By filling this form, bidder/proposer declares its qualification as a local business as defined in County of Santa Clara Board Policy, Section 5.3.13.

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

_______________________________________   _____________________________
Name                                    Date                               Business License Number (if applicable)
APPENDIX E
OFFEROR’S TERMS AND CONDITIONS

Should an Offeror object to any of the County’s terms and conditions in Attachments A, B-2, C, D and E, Offeror must propose specific alternative language and indicate the reason for the objection. The County may or may not accept the alternative language. General references to the Offeror’s terms and conditions or attempts at complete substitutions are not acceptable to the County. Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed changed followed by the specific proposed alternate wording.

In addition, Offerors must submit with their proposal any additional terms and conditions that they expect to have included in the contract negotiated with the County. Offerors must provide specific proposed wording and a brief discussion of the purpose and impact, if any. Include any applicable agreement, such as license, service level, maintenance, etc.
ATTACHMENT A
SAMPLE AGREEMENT BY AND BETWEEN
THE COUNTY OF SANTA CLARA AND “CONTRACTOR”

COUNTY OF SANTA CLARA STANDARD TERMS AND CONDITIONS
FOR AGREEMENT FOR GOODS AND RELATED SERVICES

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. PRODUCTS
Contractor agrees to provide the County all goods 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 goods. 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, IN MAILINGS, ATTACHED TO INVOICES OR WITH ANY GOODS 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 provide to the County, all documentation and manuals relevant to the goods to be supplied, at no additional cost. Such documentation and shall be delivered either in advance of the delivery of goods or concurrently with the delivery of goods.

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 goods 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.

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 goods 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 B 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 County’s Procurement Director.

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. In the event that the 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.

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, accept any commercial unit or units and reject the rest.

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 Procurement Director, if he/she 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 Purchasing Director 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 B 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. **AVAILABILITY OF FUNDING**
The County's obligation for payment of any contract beyond the current fiscal year end is contingent upon the availability of funding and upon appropriation for payment to the Contractor. No legal liability on the part of the County shall arise for payment beyond June 30 of the calendar year unless funds are made available for such performance.

14. **PAYMENT**
Payment shall be due Net 30 days from the date of acceptance of the goods ordered, or Net 30 days from the date of approval by County of correct and proper invoices, whichever date is later. Payment is deemed to have been made on the date when the County mails the warrant or initiates the electronic fund transfer.

Notwithstanding anything to the contrary, County shall not make payments prior to receipt of goods or services (i.e. the County will not make “advance payments”). Unless specified in writing in a contract release 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.

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 Agreement 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 #94-730482K. 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 contract release purchase order at any time for the convenience of the County by giving at least thirty (30) days written notice prior to the intended date of termination specifying the effective date and scope of such termination. If County determines that the Contractor’s actions contribute to the curtailment of an essential service or pose an immediate threat to life, health or property, County may terminate this...
Agreement immediately without penalty upon issuing either oral or written notice to the Contractor and without any opportunity to cure.

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.

18. **TERMINATION FOR CAUSE**

County may terminate this Agreement or any contract release purchase 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 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 contract release purchase order.

In the event of such termination, 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 contract release purchase 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 provisions 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 10 days (or other specified time period by the County) to cure. If, within 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.

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 of the party’s duties under this Agreement.

20. **BUDGETARY CONTINGENCY**

Performance and/or payment by the County pursuant to this Agreement is contingent upon the appropriation of sufficient funds by the County for services 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.
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 services or the County’s 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 Director of Procurement or designee, who shall furnish the decision to the Contractor in writing. The decision of the Director of Procurement or designee shall be final and conclusive. The Contractor shall proceed diligently with the performance of the contract pending the Director of Procurement’s decision. The Director of Procurement or designee shall not be required to decide issues that are legal or beyond his or her scope of expertise.

23. ACCOUNTABILITY

Contractors will be the primary point of contact for the manufacturer, deliverer or any subcontractors and assume the responsibility of all matters relating to the purchase, including those involving the manufacturer and deliverer or any subcontractor, as well as payment issues. If 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, 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 enquiring entity or the new entity is legally required to:

A. 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.

B. 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.

C. 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

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 the act and any standards or regulations issued there under.

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.

Each party, as applicable, shall give the other party notice of its inability to perform and particulars in 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 Force Majeure 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.

The County shall reserve the right to terminate this Agreement and/or any applicable order or contract release purchase order upon non-performance by Contractor. The County shall reserve the right to extend the agreement and time for performance at its discretion.

28. CONFLICT OF INTEREST

Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required under this Agreement.

29. 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, servant, 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, servant, or employee of County, nor shall any such person be entitled to any benefits available or granted 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.

30. INSURANCE

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

31. DAMAGE AND REPAIR BY CONTRACTOR

Any and all damages 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 72 hours of the incident unless the County requests or agrees to an extension or another time frame. The clean up 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.

32. LIENS, CLAIMS, AND 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.

33. 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.

34. INDEMNITY

County shall not be liable for, and Contractor shall defend, indemnify and hold harmless County and the employees and agents of County (collectively, "County Parties") against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including without limitation attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), related to and arising either directly or indirectly from any act, error, omission or negligence of Contractor or its contractors, licensees, agents, servants or employees, excepting only Claims caused by the sole negligence or willfulness of County Parties. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under its agreement with the County.

35. INTELLECTUAL PROPERTY INDEMNITY

RFP #RFP-PRO-FY15-0164 Rental of Therapeutic Support Surfaces and Bariatric Beds

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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 agencies 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 awards as a result of any such claim.

36. 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 non-exclusive 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.

37. COOPERATION WITH REVIEW

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

39. 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 audit exceptions set forth in any County audits. The Contractor shall pay to County the full amount of any audit determined to be due as a result of County audit exceptions. This provision is in addition to other inspection and access rights specified in this Agreement.

40. 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 terms 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.

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.

41. 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 cause giving rise to the termination.

42. 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 30 feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.
43. **BEVERAGE NUTRITIONAL CRITERIA**

If Contractor provides beverages through or for County departments, County programs, County-sponsored meetings or events, or at County owned/operated facilities, Contractor shall not use County funds to purchase beverages that do not meet the County’s nutritional beverage criteria, if applicable. The six categories of nutritional beverages that meet these criteria are (1) water with no additives; (2) 100% fruit juices with no added sugars, artificial flavors or colors (limited to a maximum of 10 ounces per container); (3) dairy milk, non-fat, 1% and 2% only, no flavored milks; (4) plant derived (i.e., rice, almond, soy, etc.) milks (no flavored milks); (5) artificially-sweetened, calorie-reduced beverages that do not exceed 50 calories per 12-ounce container (teas, electrolyte replacements); and (6) other non-caloric beverages, such as coffee, tea, and diet sodas. These criteria may be waived in the event of an emergency or in light of medical necessity.

44. **NON-DISCRIMINATION**

Contractor shall comply with all applicable Federal, State, and local laws and regulations, including Santa Clara County’s policies, concerning nondiscrimination and equal opportunity in contracting. Such laws include, but are not limited to, the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (§§ 503 and 504); California Fair Employment and Housing Act (Government Code §§ 12900 et seq.); and California Labor Code §§ 1101 and 1102. Contractor shall not discriminate against any employee, subcontractor or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Contractor discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status. Contractor’s violation of this provision shall be deemed a material default by Contractor giving County a right to terminate the contract for cause.

45. **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 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 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.

46. **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’s deadline for responding to the CPRA request. If Contractor fails to obtain such
remedy within County’s deadline for responding 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 attorneys 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.

47. **SEVERABILITY**

Should any part of the 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.

48. **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 or not similar, nor will any waiver constitute a continuing waiver unless the writing signed by the County so specifies.

49. **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 Director of Procurement or designee.

50. **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.

51. **HANDWRITTEN OR TYPED WORDS**

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

52. **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.

53. **ENTIRE AGREEMENT**

This Agreement and its Exhibits constitute the final, complete and exclusive statement of the terms of the agreement between the parties. It incorporates and supersedes all the 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.
54. **EXECUTION & 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 by facsimile transmission. Such facsimile signature must be treated in all respects as having the same effect as an original signature. The original signature copy must be sent to the County by United States Postal Service mail, sent by courier or delivered by hand.

55. **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.

56. **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- and post-sales support, problem resolution assistance and required information on a timely basis.

57. **SURVIVAL**

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

58. **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.

59. **ELECTRONIC COPY OF SIGNED AGREEMENT**

All parties agree that an electronic copy of a signed contract shall have the same force and effect as an original signed contract provided that the Contractor agrees to deliver to the County the original signed contract within 7 business days of sending an electronic copy. The term “electronic copy” for purposes of this provision refers to a transmission by facsimile or electronic mail in a portable document format.

60. **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 the entity’s Board of Directors or Executive Director. This Agreement shall not be effective or binding unless approved in writing by the County Director of Procurement, or authorized designee, as evidenced by their signature as set forth in this Agreement.
ATTACHMENT B-2

INSURANCE REQUIREMENTS FOR
STANDARD CONTRACTS ABOVE $100,000

Indemnity

The Contractor shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "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. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement.

Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.
C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:
   a. Each occurrence - $1,000,000
   b. General aggregate - $2,000,000
   c. Products Completed Operations aggregate - $2,000,000
   d. Personal Injury - $1,000,000

2. General liability coverage shall include:
   a. Premises and Operations
   b. Products/Completed
   c. Personal Injury liability
   c. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, which shall read:

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with
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insurance provided under this policy. Public Entities may also be added to the additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. **Automobile Liability Insurance**

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars ($1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

4a. **Aircraft/Watercraft Liability Insurance** (Required if Contractor or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement)

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars ($1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired aircraft/watercraft.

5. **Workers' Compensation and Employer's Liability Insurance**

a. Statutory California Workers' Compensation coverage including broad form all-states coverage.

b. Employer's Liability coverage for not less than one million dollars ($1,000,000) per occurrence.

E. **Special Provisions**

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.

2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractors obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.
3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.

4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

F. **Fidelity Bonds** (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.
ATTACHMENT C
SUPPLEMENTAL TERMS AND CONDITIONS

1. Estimated Usage

Although the estimated purchase quantities included in this RFP reflect the current expectations of the County for the period of the contract, they are only estimates. The County will be under no obligation to contractor to rent any quantities of the goods listed as a result of having provided this estimate or of having any typical or measurable requirement in the past. The County may require goods in an amount less than, or in excess of, the estimated rental quantities; and the quantities actually used, whether in excess of the estimate or less than the estimate, shall not give rise to any claim for compensation other than the total of the unit prices in the contract for the quantity actually ordered.

2. Invoicing Instructions

Contractor shall submit an invoice for all goods provided during the preceding month to the billing address provided on the Purchase Order.

Each invoice shall include the following information:
   1. Unique Invoice Number
   2. Invoice Date;
   3. Contract Number;
   4. Contract Release Purchase Order Number;
   5. Name of Ordering Department;
   6. Name of County Staff Member Placing Order;
   7. Date Order Placed;
   8. Delivered Location(s);
   9. Date of Delivery;
   10. Name of person who signed for and received the product
   11. List of Items Installed/Delivered;
   12. Quantity, Unit Price and Extended Price for Each Item;
   13. Total Invoice Amount;
   14. Payment Terms; and
   15. Whether Invoice is for Partial or Complete Order.

In the event that contractor has more than one purchase order with the County, invoices shall be submitted once a month.

The County has decentralized accounts payable departments. The bill-to address for each order shall be provided on each contract release purchase order.

Original invoices shall be sent separately to each ordering department as identified on the contract release order.

Invoices will not be processed for payment until product/services on an order are received, installed and accepted by the County.
3. Credit Memos

Contractor shall issue a credit memo to the County identifying any amount due to the County resulting from an order placed under this contract (i.e., refunds of overcharges, return of defective goods and cancellation of order after payment has been made to contractor, etc.) In the event that County purchases are insufficient to offset the amount of any credit memo within two calendar months of the issuance of the credit memo, contractor shall issue a refund to the County.

Credit memos shall be provided listing the item(s), dollar amount, and purchase order number credited.

4. Detention Center Installation and/or Delivery

All personnel to be employed in performance of work under this contract shall be subject to background checks and clearance prior to working in a youth detention facility, a sheriff's facility, a corrections facility, or any County facility which may require such security.

County will provide information forms for the Contractor to complete on all persons who will be working in or will need access to the facility. Contractor will submit the completed forms to the County Project Manager at least five (5) County working days prior to the start of work on the project or prior to the use of any person subsequent to the Contractor's start of work. The County's Project Manager will provide the information forms to the County departments requesting these security measures. Omissions or false statements, regardless of the nature or magnitude, may be grounds for denying clearance.

No person shall be employed under this Agreement that has not received prior clearance from the County. The County is not required to give reason for denying clearance.

5. Delivery

Goods shall be unloaded, delivered inside, and installed at various designated locations at no additional charge. Some County locations may not have freight/passenger elevators or receiving docks. Contractor shall make all necessary arrangements for lift trucks (gate), or other means necessary to complete delivery and installation of the contracted items.

6. Failure to Supply

A. In the event of Contractor's failure to perform its supply obligations in accordance with the terms of this section 5, the County who commit to Contractor as a primary vendor (first call vendor) may rent products equivalent to the Products ("Substitute Equipment") from another non-contracted supplier and Contractor will be liable to the County for the difference between the rental fee the County would have paid to Contractor for such Equipment and the rental fee the County paid to the non-contract supplier for use of Substituted Equipment during the period of Equipment unavailability. County must provide documentation within 90 days of actual
Substitute Equipment rental use. Contractor may contact the ordering Department within 24 hours to determine: (2) if need still exists for requested Equipment; and (b) to verify use of Substitute Equipment and determine if it can be replaced. If Equipment is still needed by the ordering Department and not in use, Contractor will replace Substitute Equipment. Contractor’s obligations as described above continue until Contractor delivers the Equipment to the ordering Department. In no case will an ordering Department be required to remove Substitute Equipment during continuous use by a single patient so Contractor can fulfill its obligations under this Section. However, Contractor will not be obligated to reimburse an ordering Department that fails to notify Contractor when Substitute Equipment is no longer in continuous use by the original patient. Notwithstanding the foregoing, Contractor will have no obligation to remit payment to an ordering Department for the use of Substitute Equipment, if and to the extent that:

1. The ordering Department is unwilling to replace Substitute Equipment that has not been in continuous use by a single patient, once Equipment is available through Contractor, or

2. No Party will be liable for any delay or failure in performance under this Agreement, or for any other interruption of service resulting directly or indirectly from acts beyond the reasonable control of a party including but not limited to industry-wide or original equipment manufacturer shortages and acts of God, including, but not limited to, fire, flood, storm earthquake, war, national emergency, natural disaster, or other cause beyond the reasonable control of either Party.

B. In such event, Contractor also will be liable to County and the Clients for any loss of Administrative Fees resulting from such failure in an amount not to exceed 1 ½ times the fee due to County regarding the Products not delivered. The remedies set forth in this section are in addition to any other rights and remedies County may have resulting from such failure.

C. Return or Recall of Products. County, in addition to and not in limitation of any other rights and remedies, shall have the right to return Products to Contractor, in accordance with Contractor’s return goods policy attached hereto as Attachment D and as agreed to by the County. In the event a product recall or a court action impacting supply occurs, Contractor shall notify the County in writing within twenty-four (24) hours from when it becomes aware of any such recall or action. Contractor’s obligations in this section shall survive the expiration or earlier termination of this Agreement.

D. Product Acceptance. Upon completion of the delivery of Equipment, the Contractor shall ensure that the Equipment meets or exceeds the specifications set out in original manufacturer’s published documentation for such Equipment. The County shall have a period of at least forty-eight (48) hours from the first operational use of Equipment rented from Contractor to conduct acceptance testing of such Equipment. Acceptance testing may include, but is not limited to safety testing, calibration, performance testing, documentation inspection and testing for adherence to the Equipment’s specifications. Formal acceptance of the Equipment and County’s obligation to pay the first invoice in connection with such rental Equipment will occur
in accordance with the terms agreed to between County and Contractor. A complete set of all test documentation and procedures for the rental Equipment will be made available to the County prior to final acceptance. If the Equipment fails the acceptance testing, the County may, at its discretion; return the Equipment to the Contractor and Contractor will replace the Product at no additional charge to County.

E. **Training.** Contractor will provide in-service training for operators of the Equipment at any County site and at Contractor’s expense, as requested by the County. Contractor will provide follow-up in-service training as determined by County through the term of this Agreement at no additional charge.

7. **Product Quality**

A. **Warranty.** Contractor warrants that the Products will be delivered to County in patient-ready condition. “Patient-ready condition” shall mean that the Products are safe for their intended use, have been inspected in accordance with and to the manufacturer’s guidelines, cleaned and processed for immediate use. If any of the Products are not delivered in “patient-ready condition,” Contractor will immediately replace the non-functioning unit of Equipment and re-perform the Services. Contractor will bear all costs of returning and replacing the non-functioning Equipment. This section and the obligations contained herein shall survive the expiration or earlier termination of this Agreement. The remedies set forth in this section are in addition to, and not a limitation on, any other rights or remedies that may be available against Contractor.

B. **Preventive Maintenance.** During the Term of the Agreement, Contractor will perform preventive maintenance on Equipment owned by Contractor according to the manufacturer’s specifications at no additional charge to the County. The frequency of preventive maintenance and tests performed will comply with the manufacturer’s recommendations, external codes (e.g., state, The Joint Commissions, etc.).

C. **Quality Guarantee.** In the event any goods or equipment delivered hereunder shall be defective in any respect whatsoever, contractor shall indemnify and save harmless the County from all losses or expenses by reason of all accidents, injuries or damages to persons or property resulting from the use of such goods or equipment or which are contributed to by said defective condition.

8. **Delivery/Service Location**

Central Sterile Processing Department  
Santa Clara Valley Health and Hospital System  
751 South Bascom Avenue  
San Jose, CA 95128  

Respiratory Care Services Department  
Santa Clara Valley Health and Hospital System  
751 South Bascom Avenue
San Jose, CA 95128

All other delivery locations will be specified at the time of order.

9. **Ordering Instructions/Procedures**

A contract award document shall be issued to the successful bidder for the contract period.

Orders will be placed as needed by the County.

No minimum shipment quantity shall be required by the Contractor.

10. **ORDERING**

The County does not guarantee, whether expressed or implied, to rent an estimated annual requirement. Contractor agrees to provide and deliver contracted items as needed by County, at the agreed upon prices, regardless of quantity. There shall be no minimum order requirements.

11. **Authorized Distributor**

To be considered for contract award, Contractor shall be an authorized distributor for the manufacturer of the goods or equipment specified and shall submit proof of such with its bid.

12. **Usage Reports**

Contractor shall provide to County regular reports which provide the following detail about County purchases under the contract:

1. Purchase order number
2. Contractor’s part number and description of each item/service included in the contract;
3. Rental quantity per item;
4. List price per item;
5. Discounted price per item;
6. Total value of rental per item; and
7. Total value of all rentals under the contract.

Reports shall be provided on a monthly basis and shall be submitted to the County Procurement Department Contract Administrator identified in the Contract.

Contractor will provide semi-annual usage report to the County Contract Administrator. Reports shall provide summary information of product ordered or service provided by quantity (total units) and dollar spend Countywide. Report shall also include dollar volume by service type or units ordered and by County department.
Contractor will provide annual usage reports to the County Contract Administrator and County Contract Manager within 30 days after each contract anniversary date or as requested by the County. Reports shall be provided both electronically and in hard copy.

At minimum, reports shall provide summary information of product by category. Report shall include total price paid and total number of units by category and service type.

13. **Management Reports and Disclaimer:**

As part of product and service acquired by the County, Contractor shall provide certain purchase reports, analysis reports and other management reports and information, in either paper or electronic format. These reports shall include information relating to the County’s usage and any information reported to you. The Contractor is responsible for the accuracy and completeness of the reports provided to the County.

14. **Response Times**

**Delivery**
Delivery is required within 4 hours of the order placement phone call.

**Pick-up**
Return pick-up is required within 4 hours of the return phone call.

**Penalties**
Failure of contractor to deliver within the time specified, or to deliver within the time extended by the County for rejected goods, shall constitute contract default and in addition to the other remedies available to the County, the County reserves the right to rent in the open market goods of comparable grade to replace goods rejected or not delivered. On all such rentals, contractor shall reimburse the County for any expenses incurred in excess of contract prices or the County may deduct such amount from monies owed the defaulting contractor.
ATTACHMENT D

CONTRACTOR’S RETURN POLICY

County may return to Contractor any Equipment due to damage, defect or Contractor error. Contractor shall be responsible for any return shipping and replacement costs associated with such returns. Contractor will replace the returned Equipment at no additional charge to the County.

Failure of contractor to replace rejected goods, when so requested, immediately or as directed by the County, shall constitute contract default and in addition to the other remedies available to the County, the County reserves the right to rent in the open market goods of comparable grade to replace goods rejected. On all such rentals, contractor shall reimburse the County for any expenses incurred in excess of contract prices or the County may deduct such amount from monies owed, or to be owed, the defaulting contractor.
ATTACHMENT E

BUSINESS ASSOCIATE AGREEMENT

WHEREAS, County of Santa Clara (“County” or “Covered Entity”) is a Covered Entity, as defined below, and wishes to disclose certain Protected Health Information (“PHI”) to (Enter Name of Contractor____) “Business Associate” pursuant to the terms of the Agreement and this Business Associate Agreement (“BAA”); and

WHEREAS, the County is a hybrid entity pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) performing both covered and non-covered functions; and

WHEREAS, the Santa Clara Valley Health and Hospital System, which is part of the County is comprised of multiple County Departments, including Valley Medical Center and Clinics (“VMC”), the County Mental Health Department (“MHD”), the County Department of Alcohol and Drug Services (“DADS”), the County Public Health Department (“PHD”) and the County Custody Health Services (“Custody Health”) and County Valley Health Plan (“VHP”), all of which are “Covered Entities” under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”); and

WHEREAS, the Covered Entity and Business Associate are “qualified service organizations” or “QSO” within the meaning of the federal law governing Confidentiality of Alcohol and Drug Abuse Patient Records and its implementing regulations, 42 Code of Federal Regulations (“C.F.R.”) Part 2; and

WHEREAS, the Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI used and disclosed pursuant to this BAA in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”), California Welfare & Institutions Code 5328, 42 U.S.C. Section 290d-2, 42 C.F.R part 2, California Confidentiality of Medical Information Act Civil Code Section 56, California Health & Safety Code 1280.15, and other applicable laws; and to the extent the Business Associate is to carry out the covered entity’s obligation under the Privacy Rule, the Business Associate must comply with the requirements of the Privacy Rule that apply to the covered entity in the performance of such obligation.

WHEREAS, part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require Covered Entities to enter into a contract containing specific requirements with any Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this BAA.
NOW, THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to the BAA, the parties agree as follows:

I. Definitions

Terms used, but not otherwise defined, and terms with initial capital letters in the BAA have the same meaning as defined under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005, and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws.

Privacy Breach Any acquisition, access, use or disclosure of Protected Health Information in a manner not permitted or allowed under state or federal privacy laws.

Business Associate is a person, organization, or agency other than a workforce member that provides specific functions, activities, or services that involve the use, creation, or disclosure of PHI for, or on behalf of, a HIPAA covered health care component. Examples of business associate functions are activities such as claims processing or administration, data analysis, utilization review, quality assurance, billing, benefit management, practice management, repricing; and legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services.

Covered Entity shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.

Designated Record Set shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

Electronic Protected Health Information means Protected Health Information that is maintained in or transmitted by electronic media.

Electronic Health Record shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.

Health Care Operations shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

Privacy Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

Protected Health Information or PHI means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition
of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (ii) that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 160.103. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].

**Protected Information** shall mean PHI provided by Covered Entity to Business Associates or created or received by Business Associates on Covered Entity’s behalf.

**Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

**Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h)(1) and 45 C.F.R. 164.402.

**II. Duties & Responsibilities of Business Associates**

**a. Permitted Uses.** Business Associate shall use Protected Information only for the purpose of performing Business Associate’s obligations under the Contract and as permitted or required under the Contract or Addendum, or as required by law.

Further, Business Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule, Welfare & Institutions Code Section 5328, 42 C.F.R. Part 2, or the HITECH Act, if so used by Covered Entity. However, Business Associate may use Protected Information (i) for the proper management and administration of Business Associate, (ii) to carry out the legal responsibilities of Business Associate, or (iii) for Data Aggregation purposes for the Health Care Operations of Covered Entity. [45 C.F.R. Sections 164.502(a)(3), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)].

**b. Permitted Disclosures.** Business Associate shall not disclose Protected Information except for the purpose of performing Business Associate’s obligations under the Agreement and as permitted under the Agreement and this BAA. Business Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule, 42 C.F.R., Welfare & Institutions Code Section 5328, or the HITECH Act if so disclosed by Covered Entity. However, Business Associates may disclose Protected Information (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of Covered Entity. If Business Associate discloses Protected Information obtained pursuant to the Agreement and this BAA to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify Business Associate of any Breaches of confidentiality of the Protected Information within twenty-four (24) hours of discovery, to the extent it has obtained knowledge of such Breach. [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i)-(ii)(A) and 164.504(e)(4)(ii)].
c. **Prohibited Uses and Disclosures.** Business Associate shall not use or disclose Protected Information for fundraising or marketing purposes. [42 U.S.C. Section 17936(a) and 45 C.F.R. 164.501]. Business Associate shall not disclose Protected Information to a health plan for payment or health care operations purposes if the Individual has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. [42 U.S.C. Section 17935(a); 45 C.F.R. Section 164.502(a)(5)(ii)]. Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act. [42 U.S.C. Section 17935(d)(2)]. This prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the Agreement.

d. **Appropriate Safeguards.** Business Associate shall implement appropriate administrative, technological and physical safeguards as are necessary to prevent the use or disclosure of Protected Information other than as permitted by this BAA that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, and comply, where applicable, with the HIPAA Security Rule with respect to Electronic PHI.

e. **Reporting of Improper Access, Use or Disclosure.** Consistent with Section (h)(4) of this agreement, Business Associate shall notify Covered Entity within twenty – four (24) hours of any suspected or actual breach of Protected Information; any use or disclosure of Protected Information not permitted by the Contract or Addendum; any security incident (i.e. any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in any information system) related to Protected Information, and any actual or suspected use or disclosure of data in violation of any applicable federal or state laws by Business Associate or its agents or subcontractors.

Business Associate shall report to SCVHHS Compliance & Privacy Officer in writing any access, use or disclosure of Protected Information not permitted by the Agreement and this BAA. As set forth below, [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e) (2) (ii) (C); 45 C.F.R. Section 164.308(b); California Health & Safety Code 1280.15, California Confidentiality of Medical Information Act 56.10, California Welfare & Institutions 5328].

Compliance & Privacy Officer  
Santa Clara Valley Health & Hospital System  
2325 Enborg Lane, Suite 240  
San Jose, California 95128  
Facsimile: (408) 885-6886  
Telephone: (408) 885-3794

The Breach notice must contain: (1) a brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known; (2) the location of the breached information; (3) the unauthorized person who used the PHI or to whom the disclosure was made; (4) whether the PHI was actually acquired or viewed; (5) a description of the types of PHI that were involved in the Breach; (6) safeguards in place prior to the Breach; (7) actions taken in response to the Breach; (8) any steps Individuals should take to protect themselves from potential harm resulting from the Breach; (9) a brief description of what the business associate is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against further
Breaches; and (10) contact procedures for Individuals to ask questions or learn additional
information, which shall include a toll-free telephone number, an e-mail address, website or
postal address. [45 C.F.R. Sections 164.410(c) and 164.404(c)]. Business Associate shall take
any action pertaining to such unauthorized disclosure required by applicable federal and state
laws and regulations. Business Associate shall otherwise comply with 45 C.F.R. Section
164.410 with respect to reporting Breaches of Unsecured PHI. [42 U.S.C. Section 17921; 45
C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 165.308(b)]

f. Business Associate’s Agents and Subcontractors. Business Associate shall ensure
that any agents or subcontractors, to whom it provides Protected Information, agree in writing to
the same restrictions and conditions that apply to Business Associate with respect to such PHI
and implement the safeguards required by paragraph (II) d above with respect to Electronic PHI.
[45 C.F.R. Sections 164.502(e)(1)(ii), 164.504(e)(2)(ii)(D)and 164.308(b)]. If Business
Associate knows of a pattern of activity or practice of an agent or subcontractor that constitutes
a material breach of violation of an agent or subcontractor’s obligations under the Contract or
Addendum or other arrangement, the Business Associate must take reasonable steps to cure the
breach or end the violation. If these steps are unsuccessful, Business Associate shall terminate
the contract or arrangement with agent or subcontractor, if feasible. [45 C.F.R. Section
164.504(e)(1)(iii)]. Business Associate shall provide written notification to Covered Entity of
any pattern of activity or practice of a subcontractor or agent that Business Associate believes
constitutes a material breach or violation of the agent or subcontractor’s obligations under the
Contract or Addendum or other arrangement with twenty four (24) hours of discovery and shall
meet with Covered Entity to discuss and attempt to resolve the problem as one of the reasonable
steps to cure the breach or end the violation.

The Business Associate shall implement and maintain sanctions against agents and
subcontractors that violate such restrictions and conditions and shall mitigate the effects of any
such violation.

g. Access to Protected Information. Business Associate shall make Protected
Information maintained by Business Associate or its agents or subcontractors in Designated
Record Sets available to Covered Entity for inspection and copying within ten (10) days of a
request by Covered Entity to enable Covered Entity to fulfill its obligations under the Privacy
Rule, including, but not limited to, 45 C.F.R. Section 164.524. [45 CFR. Section
164.504(e)(2)(ii) (E); 42 C.F.R. part 2 and Welfare & Institutions Code Section 5328]. If
Business Associate maintains an Electronic Health Record, Business Associates shall provide
such information in electronic format to enable Covered Entity to fulfill its obligations under the
HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e)(1). If any Individual
requests access to PHI directly from Business Associate or its agents or subcontractors, Business
Associate shall notify Covered Entity in writing within five (5) days of the request.

h. Electronic PHI. If Business Associate receives, creates, transmits or maintains
Electronic PHI on behalf of Covered Entity, Business Associates will, in addition, do the following:

(1) Develop, implement, maintain and use appropriate administrative, physical, and
technical safeguards in compliance with Section 1173(d) of the Social Security
Act, Title 42, Section 1320(s) or the United States Code and Title 45, Part 162
and 164 of CFR to preserve the integrity and confidentiality of all electronically
maintained or transmitted PHI received from or on behalf of Covered Entity.

(2) Document and keep these security measures current and available for inspection
by Covered Entity.

(3) Ensure that any agent, including a subcontractor, to whom the Business Associate
provides Electronic PHI, agrees to implement reasonable and appropriate
safeguards to protect it.

(4) Report to the Covered Entity any Security Incident of which it becomes aware.
For the purposes of this BAA and the Agreement, Security Incident means, as set
forth in 45 C.F.R. Section 164.304, “the attempted or successful unauthorized
access, use, disclosure, modification, or destruction of information or interference
with system operations in an information system.” Security incident shall not
include, (a) unsuccessful attempts to penetrate computer networks or servers
maintained by Business Associate, or (b) immaterial incidents that occur on a
routine basis, such as general “pinging” or “denial of service” attacks.

i. Amendment of PHI. Within ten (10) days of receipt of a request from Covered Entity
for an amendment of Protected Information or a record about an individual contained in a
Designated Record Set, Business Associate or its agents or subcontractors shall make such
Protected Information available to Covered Entity for amendment and incorporate any such
amendment to enable Covered Entity to fulfill its obligations under the Privacy Rule. If any
Individual requests an amendment of Protected Information directly from Business Associate or
its agents or subcontractors, Business Associate must notify Covered Entity in writing within
five (5) days of the request. Any approval or denial of amendment of Protected Information
maintained by Business Associate or its agents or subcontractors shall be the responsibility of
Covered Entity.

j. Accounting Rights. Business Associate agrees to document such disclosures of PHI
and information related to such disclosures as would be required for Covered Entity to respond
to a request by an Individual for an accounting of disclosures of PHI in accordance with Privacy
Rule and the HITECH Act. [42 U.S.C. Section 17935(c) and 45 C.F.R. Section 164.528].
Business Associate agrees to implement a process that allows for an accounting of disclosures to
be collected and maintained by Business Associate and its agents or subcontractors for at least
six (6) years prior to the request. Accounting of disclosures from an Electronic Health Record
for treatment, payment or health care operations purposes are required to be collected and
maintained for three (3) years prior to the request, and only to the extent Business Associate
maintains an electronic health record and is subject to this requirement.

At a minimum, the information collected and maintained shall include: (i) the date of
disclosure; (ii) the name of the entity or person who received Protected Information and, if
known, the address of the entity or person; (iii) a brief description of Protected Information
disclosed and (iv) a brief statement of purpose of the disclosure that reasonably informs the
Individual of the basis for the disclosure, or a copy of the Individual’s authorization, or a copy of
the written request for disclosure. [45 C.F.R. Section 164.528(b)]. In the event that the request
for an accounting is delivered directly to Business Associate or its agents or subcontractors,
Business Associate shall forward it to Covered Entity in writing within five (5) days of the
request. It shall be Covered Entity’s responsibility to prepare and deliver any such accounting
requested. Business Associate shall not disclose any Protected Information except as set forth in the Agreement and this BAA.

**k. Governmental Access to Records.** Business Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to Covered Entity and to the Secretary of the U.S. Department of Health and Human Services (the “Secretary”) for purposes of determining Business Associate’s compliance with the Privacy Rule [45 C.F.R. Section 164.504(e)(2)(ii)(I)]. Business Associate shall concurrently provide to Covered Entity a copy of any internal practices, books, and records relating the use and disclosure of PHI that Business Associate provides to the Secretary.

**l. Minimum Necessary.** Business Associate and its agents or subcontractors shall request, use and disclose only the minimum amount of Protected Information reasonably necessary to accomplish the purpose of the request, use, or disclosure in accordance with 42 U.S.C. Section 17935(b). Business Associate understands and agrees that the definition of “minimum necessary” is defined in HIPAA and may be modified by the Secretary. Each party has an obligation to keep itself informed of guidance issued by the Secretary with respect to what constitutes “minimum necessary.”

**m. Adherence to the Requirements of 42 C.F.R.** Business Associate acknowledges that in receiving, transmitting, transporting, storing, processing or otherwise dealing with patient records and information in connection with providing drug testing services to patients covered by SCVHHHS under this Agreement and BAA, it is fully bound by the regulations governing confidentiality of alcohol and drug abuse patient records, 42 C.F.R. Section 2.1, et seq., and HIPAA, and may not use or disclose the information except as permitted or required by this BAA or applicable law.

**n. Resist Efforts in Judicial Procedures.** Business Associates agree to resist any efforts in judicial proceedings to obtain access to the protected information except as expressly provided for in the regulations governing the Confidentiality of Alcohol and Drug Abuse Records, 42 C.F.R. Part 2.

**o. Data Ownership.** Business Associate acknowledges that Business Associate has no ownership rights with respect to the Protected Information governed by this BAA, and all rights, interests, and title remain vested in the County at all times.

**p. Warranties and Disclosures.** Business Associate assumes risk for any and all use of PHI. SCVHHHS assumes no liability or responsibility for any errors or omissions in, or reliance upon, the PHI, including, but not limited to information electronic systems. SCVHHHS makes no representations or warranties of any kind, express or implied, including but not limited to: accuracy, completeness, or availability of content, non-infringement, merchantability or fitness for a particular use or purpose, the fullest extent of the law. SCVHHHS does not warrant that PHI is free of viruses or other harmful components or that service will be uninterrupted or error-free, or that defects will be corrected.

**q. Audits, Inspection and Enforcement.** Within ten (10) days of a written request by Covered Entity, Business Associate and its agents or subcontractors shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this BAA.
for the purpose of determining whether Business Associate has complied with this BAA; provided, however, that (i) Business Associate and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection; and (iii) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate.

The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate’s facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate of its responsibility to comply with the BAA, nor does Covered Entity’s (i) failure to detect or (ii) detection, but failure to notify Business Associate or require Business Associate’s remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of Covered Entity’s enforcement rights under the Agreement or BAA, Business Associate shall notify Covered Entity within five (5) days of learning that Business Associate has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.

III. Termination

a. Material Breach. A Breach by Business Associate of any provision of this BAA shall constitute a material Breach of the Agreement and shall provide grounds for immediate termination of the Agreement, any provision in the Agreement to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].

b. Judicial or Administrative Proceedings. Covered Entity may terminate the Agreement, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, 42 C.F.R. Part 2, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, 42 C.F.R. Part 2, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

c. Effect of Termination. Upon termination of the Agreement for any reason, Business Associate shall, at the option of Covered Entity, return or destroy all Protected Information that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, Business Associate shall continue to extend the protections of Section 2 of the BAA to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 C.F.R. Section 164.504(e) (ii)(2)(I)]. If County elects destruction of the PHI, Business Associate shall certify in writing to County that such PHI has been destroyed.

IV. General Provisions
a. **Indemnification.** In addition to the indemnification language in the Agreement, Business Associate agrees to be responsible for, and defend, indemnify and hold harmless the Covered Entity for any Breach of Business Associate’s privacy or security obligations under the Agreement, including any fines, penalties and assessments that may be made against Covered Entity or the Business Associate for any privacy breaches or late reporting and agrees to pay the cost of and notice for any credit monitoring services.

b. **Disclaimer.** Covered Entity makes no warranty or representation that compliance by Business Associate with this BAA, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for Business Associate’s own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the use and safeguarding of PHI.

c. **Amendment to Comply with Law.** The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Agreement or BAA may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable California laws relating to the security or confidentiality of PHI.

d. Upon the request of any party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to the BAA embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable California laws relating to the security or confidentiality of PHI.

Covered Entity may terminate Contract upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend the Contract or Addendum when requested by Covered Entity pursuant to this section or (ii) Business Associate does not enter into an amendment to the Contract or Addendum providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

e. **Assistance in Litigation of Administrative Proceedings.** Business associate shall notify Covered Entity within forty-eight (48) hours of any litigation or administrative proceedings commenced against Business Associate or its agents or subcontractors. Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under the Agreement or BAA, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is named as an adverse party.

f. No Third-Party Beneficiaries. Nothing express or implied in the Agreement or this BAA is intended to confer, nor shall anything herein confer, upon any person other than Covered Entities, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
g. **Effect on Agreement.** Except as specifically required to implement the purposes of the BAA, or to the extent inconsistent with this BAA, all other terms of the Agreement shall remain in force and effect.

h. **Interpretation.** The BAA shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this BAA shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, 42 Code of Federal Regulations ("C.F.R.") Part 2, the Privacy Rule and the Security Rule and other applicable California laws relating to the security or confidentiality of PHI.

i. **Governing Law, Venue.** This agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this Agreement shall be in the County of Santa Clara.

j. **Survivorship.** The respective rights and responsibilities of Business Associate related to the handling of PHI survive termination of this Agreement.
## ATTACHMENT F

List of Therapeutic Support Surfaces and Bariatric Beds

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The County reserves the right to add and delete items from this list.