



County of Santa Clara
Office of the County Executive
Procurement Department
2310 N. First Street Suite 201
San Jose, CA 95131-1040
Telephone 408-491-7400 • Fax 408-491-7496

AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND ABBOTT LABORATORIES INC FOR GOODS AND RELATED SERVICES

This Agreement is entered into by and between the County of Santa Clara (the "County" or "Customer") and Abbott Laboratories Inc. ("Contractor" or "Abbott") (the "Agreement").

The effective date of the Agreement is April 6, 2011. The parties, intended to be bound, mutually agree as follows:

KEY PROVISIONS

AGREEMENT TITLE: Reagent Rental of Automated Real-time RT-PCR System for Quantitation of HIV-1 Virus, Maintenance and Reagents

AGREEMENT NUMBER: 5500002059

INITIAL AWARD DATE: April 6, 2011

AGREEMENT TERM: April 6, 2011 to April 5, 2016, unless terminated earlier or otherwise amended.

COMMODITY NAME: Reagent Rental of Automated Real-time RT-PCR System for Quantitation of HIV-1 Virus, Maintenance and Reagents

AUTHORIZED USER: Santa Clara Valley Medical Center – The Department of Pathology and Laboratory Medicine
751 South Bascom Ave.
San Jose, CA 95128

COUNTY DEPARTMENT CONTACT: Kandace Klemba, Acting Assistant Administrative Director
Phone: (408) 885-2398
E-mail: Kandac.klemba@hhs.sccgov.org

SUPPLIER: Abbott Laboratories Inc
Molecular Division
1300 East Touhy Ave.
Des Plaines, IL 60018

SUPPLIER CONTACT: Laura Pfanz, Senior Contract & Pricing Analyst

Board of Supervisors: Mike Wasserman, George Shirakawa, Dave Cortese, Ken Yeager, Liz Kniss

County Executive: Jeffrey V. Smith

Abbott Laboratories Contract #5500002059

Phone: (224) 361-7674
E-mail: laura.pfantz@abbott.com

Lisa Koenig, Molecular Account Executive
Phone: (415) 269-2911
E-mail: lisa.koenig@abbott.com

SUPPLIER NUMBER: 1019777
PURPOSE: To establish a contract with Abbott Laboratories
TAX STATUS: Taxable
PAYMENT TERMS: Net 30 days
TOTAL AGREEMENT VALUE: Not to Exceed \$900,000.00
COUNTY CONTRACT ADMINISTRATOR:

Michelle Chardon, Buyer III
Phone: (408) 491-7423
E-mail: michelle.chardon@proc.sccgov.org

REFERENCE: The following exhibits are incorporated and constitute a material part of the Agreement:

Exhibit A: County of Santa Clara Standard Terms and Conditions for Agreement for Goods and Related Services.

Exhibit B: Price Summary and Compensation Plan

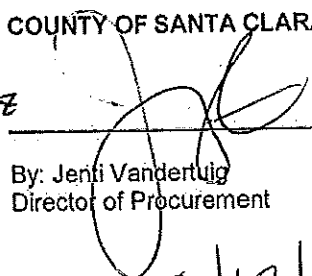
Exhibit C: Insurance Requirement

Exhibit D: Business Associate Agreement

Exhibit E: Vendor Remote Access and User Responsibility

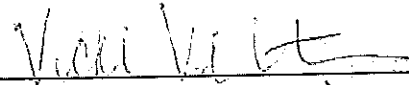
By signing below, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity, that he/she has the authority to bind the entity listed below to contractual obligations and that by his/her signature on this Agreement, the entity on behalf of which he/she acted, executed this Agreement.

COUNTY OF SANTA CLARA

5578
By: 
Director of Procurement

Date: 4/12/11

CONTRACTOR


By: (Print Name) Vicki Velthuis

Contract Pricing Analyst

Date: 4/11/2011

Exhibit A

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 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 and or mutually agreed upon in writing, 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 for the same product and volume, 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 shall to the best of its ability, on an ongoing basis, 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 duly signed by County's Procurement Director and Contractor.

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 have fourteen (14) days after written notice given to Contractor by County to cure such delivery failure. At the County's option, County may send patient samples to a reference laboratory for testing until the testing capability on the contractor's equipment is reestablished. Contractor shall be liable for the difference from the County's client price for the reference lab test and the average reportable reagent cost per test using the Contractor's system.

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 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 for goods, services, equipment and accessories shall be made within ninety (90) days, or, if additional time is required by the County, such additional time as Contractor and County shall agree and set forth in writing for a particular set of goods, service, equipment or accessories. If the goods, services, equipment, or accessories, or the tender of delivery fail in any respect to conform to the contract, the County may reject the entire tender, accept the entire tender, or, if the deliverables are commercially divisible, may, at its option, accept any commercial unit or units and reject the rest. Contractor shall be responsible to reclaim and remove any rejected goods or items at its own expense. Should Contractor fail to reclaim or remove any rejected goods or items within a reasonable time, County shall, at its option dispose of such goods or items and require reimbursement from Contractor for any costs or expenses incurred.

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 and purchase order 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. Notwithstanding the above, if the County orders product, and the product is delivered, the County shall pay for such product.

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 otherwise mutually agreed upon by the County and Contractor.

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 twelve (12) months 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, the 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. 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. Any monies owed and accrued prior to termination shall be paid to Contractor by County.

18. TERMINATION FOR CAUSE

Either party may terminate this Agreement or any contract release purchase order, in whole or in part, for cause upon thirty (30) days written notice to the other party. 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, (b) violation of any applicable laws or regulations; or (c) assignment or delegation of the rights or duties under this Agreement without the written consent of the other party.

In the event of a termination for cause, the non-defaulting party shall be entitled to recover its damages for breach in addition to any other rights and remedies provided by law.

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. INTENTIONALLY LEFT BLANK.

22. 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 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.

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, and shall not be unreasonably withheld. 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. 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 County Parties' sole negligence or willful misconduct. The County shall provide notice to Contractor of any claim for indemnification within ten (10) days of becoming aware of the claim. The Contractor shall be entitled to control the defense and settlement thereof, provided that the County determines such control is not prejudicial to the County. If the County determines such control is prejudicial to the County, the County may participate in the defense of the claim. The County shall cooperate fully in any mutual defense and settlement of a claim under the control of the Contractor.

Notwithstanding the foregoing, solely as to non-third party and/or Claims by the County: (1) Contractor's maximum liability to the County shall be \$2,000,000.00; and (2) Contractor shall have no liability to the County for punitive damages.

34. INTELLECTUAL PROPERTY INDEMNITY

Contractor represents and warrants for the benefit of the County and its users that it is the exclusive owner of all rights, title and interest in the product or services to be supplied. Contractor shall, at its own expense, indemnify, defend, settle, and hold harmless the County and its 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.

35. WARRANTY

Contractor warrants and represents that products and/or items of equipment delivered to carrier for shipment to County, or delivered directly to County, will at the time of such delivery: (a) conform to published specifications set forth in the applicable Abbott package insert(s) for such product and/or item of equipment; (b) not be adulterated or misbranded within the meaning of the U.S. Food, Drug and Cosmetic Act; and (c) be of good quality and free from defects in materials and workmanship. Except as to warranties specifically set forth in this Section 35, the only other warranties made by a Contractor with respect to products and/or equipment are those specifically and expressly stated as warranties in the Abbott package insert specifications and manuals. **CONTRACTOR MAKES NO OTHER WARRANTIES; EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER MATTER.**

Notwithstanding the foregoing, any warranties provided by Contractor will not apply to any product and/or item of equipment delivered to County hereunder, if it has been misused, altered, damaged or used other than in accordance with the applicable Abbott package insert and/or manual for such product and/or item of equipment (including the

substitution of any reagent not authorized by Contractor) or any applicable operator manual so as to affect its stability or reliability; if the serial or lot number of any product and/or item of equipment has been altered, defaced, or removed; or if any repair is attempted by personnel unauthorized by Contractor to perform such repair.

County assumes all risk for the suitability of the test results obtained by using any item of equipment and/or product hereunder (and the consequences which flow there from) when such item(s) of equipment and/or product(s) are used other than in accordance with the applicable Abbott package insert for such item of equipment or product(s) or any applicable operator manual so as to effect its stability or reliability, and is used either: (i) alone; or (ii) in combination with other articles, substances or reagents (or any combination thereof) not provided or recommended for use with each such equipment and product(s).

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

36. COOPERATION WITH REVIEW

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

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

37. AUDIT RIGHTS

Pursuant to California Government Code Section 8546.7, the parties acknowledge and agree that every contract involving the expenditure of public funds in excess of \$10,000 may be subject to audit by the State Auditor. All payments made under this Agreement shall be subject to an audit at County's option, and shall be adjusted in accordance with said audit. Adjustments that are found necessary as a result of auditing may be made from current billings.

The Contractor shall be responsible for receiving, replying to, and complying with any audit exceptions set forth in any County audits. The Contractor shall pay to the County the full amount of any audit determined to be due as a result of County audit; provided, however, that the Contractor shall have the right to dispute any audit exceptions in which case the County and the Contractor shall meet and try to resolve the audit exception in good faith. If the County and the Contractor cannot reach a resolution, either party may initiate an action to enforce its rights under this Agreement in accordance with Section 56.

38. ACCESS AND RETENTION OF RECORDS AND PROVISION OF REPORTS

Contractor shall maintain financial records adequate to show that County funds paid were used for purposes consistent with the terms of the contract between Contractor and County. Records shall be maintained during the 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 make available to the County upon written request 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) 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 make available to the County upon written request 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.

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

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

40. COUNTY NO-SMOKING POLICY

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

41. 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.

42. 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.

43. 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.

44. 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.

45. 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.

46. NON-WAIVER

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

47. USE OF COUNTY'S NAME FOR COMMERCIAL PURPOSES

Neither party shall use the name of the other party or reference any endorsement from the other party in any fashion for any purpose, without the prior express written consent of the other party.

48. HEADINGS AND TITLES

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

49. HANDWRITTEN OR TYPED WORDS

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

50. AMBIGUITIES

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

51. ENTIRE AGREEMENT

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.

52. 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.

53. NOTICES

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

54. ACCOUNT MANAGER

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

55. SURVIVAL

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

56. GOVERNING LAW, JURISDICTION AND VENUE

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

57. 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.

58. ACCEPTANCE TESTING

Vendor Validation: Contractor will provide reagents, consumables, other materials as required and personnel to demonstrate that the installed system meets or exceeds the proposer's published performance specifications for basic operation. SCVMC acknowledges that any patient samples required by the vendor for validation purposes will be provided by SCVMC at its expense. All validation data will be documented and presented to the Director of Laboratories for approval. The Validation phase will be considered complete when sign-off is obtained from both SCVMC and the Contractor's technical field personnel indicating that the performance of all components meets or exceeds the Contractor's published product specifications.

SCVMC Validation: Upon acceptance of vendor validation, SCVMC will continue validation of system components and the individual assays listed in the RFP by its personnel. Assay parameters validated may include accuracy, precision, analytical sensitivity, and linearity (reportable range), when not done so in Vendor Validation. These parameters will be compared to vendor's provided application specifications such as FDA submission documents, which must be met or exceeded. In the event that SCVMC personnel are unable to meet the application specifications, Contractor will provide application support to assist SCVMC personnel in achieving assay performance equal to or exceeding application data. Upon completion of this testing, the data will be presented to then Director of Laboratories for acceptance. Upon the Director's acceptance, the instrument will be placed into routine operation.

Exhibit B

Price Summary and Compensation Plan

Firm Pricing Guarantee:

All pricing listed hereunder are firm for the entirety of the term of the resulting contract, unless otherwise stated and or mutually agreed upon.

A. Equipment

Reagent Rental (includes utilization of the complete system such as computer and operating systems for extraction and real-time PCR instruments, extraction and real-time PCR instruments, software for data handling, interpretation, reporting and other equipment needed for operation of the system)

EQUIPMENT

List Number	Instrument Description	Quantity	Serial Number	Placement Type
07K25-01	Combo m2000sp & m2000rt	1	M2000 SP TBD M2000 RT TBD	RAP

Buyout Price of the equipment at the end of the 5-year reagent rental:

Upon end of the Term of Agreement, the Equipment buyout Price shall be one dollar (\$1.00) USD.

B. Warranty and Service

Warranty and service are covered for the term of the Agreement and are included in the HIV-1 Reagent Kit 06L18-090 price as established in Section D.

The Service coverage for m2000 (SP/RT) includes,

- A. Business Hours Coverage - On-site service Monday - Friday, 8:00 a.m. - 5:00 p.m. (excluding holidays). The standard service program includes a maximum of five (5) annual on-site service calls. Service calls beyond the annual limit will be invoiced at a set charge of six hundred dollars (\$600.00) per call. Service coverage includes all labor, travel, & parts (excluding Customer Maintenance Parts (as defined in Paragraph B below). Includes software upgrades for reliability or operational improvements at no charge (excludes menu expansion).
- B. Service coverage includes all parts (excluding Customer Maintenance Parts), travel, and labor. Customer Maintenance Parts ("Customer Maintenance Parts") include accessories, consumables and disposables that, unless explicitly included in this Agreement or service agreement, must be replaced or replenished at Customer's expense if 1) used in accordance with the performance of an Abbott test; 2) used with Abbott Equipment to perform a test procedure; or 3) damaged by Customer negligence.

Board of Supervisors: Mike Wasserman, George Shirakawa, Dave Cortese, Ken Yeager, Liz Kniss

County Executive: Jeffrey V. Smith

- C. If the Equipment being maintained has preventative maintenance requirements, the procedures will be performed during the service call, unless otherwise determined by Abbott for specific Equipment that requires scheduled preventive maintenance service calls. Required scheduled preventative maintenance service calls are not counted toward the maximum annual on-site service calls. Abbot will perform a maximum of two (2) preventative maintenance calls annually for the m2000sp and will perform a maximum of one (1) preventative maintenance calls annually for the m2000rt.

C. Other One Time Cost

Abbott will pay for the equipment LIS interface charge up to a total amount not to exceed \$7,500.

D. Recurring Cost

Reagent Products:

List Number	Description	*Estimated Annual Volume	Price Per Product/Kit	*Estimated Annual Total
Realtime HIV-1 - IVD				
06L18-090	HIV-1 Reagent Kit	37	\$3,408.00	\$123,210.00
06L18-080	HIV-1 Control Kit	10	\$475.00	\$4,750.00
06L18-070	HIV-1 Calibrator Kit	2	\$950.00	\$1,900.00
		Sub Total		\$132,746.00
m2000 Sample Extraction				
4J70-24	Sample Prep GPR Pack RNA	37	\$336.00	\$12,432.00
04J71-10	Disposable Tips (DiTis):1mL	16	\$471.00	\$7,536.00
04J71-17	Disposable Tips (DiTis):200uL	2	\$244.00	\$488.00
04J71-20	5 mL Reaction Vessels	2	\$233.00	\$466.00
04J71-60	200mL Reagent Vessel	5	\$29.00	\$145.00
04J71-75	Optical Adhesive Covers	1	\$225.00	\$225.00
04J71-80	Master Mix Tubes/Caps	1	\$45.00	\$45.00
04J71-70	96 Well Optical Reaction Plates	4	\$49.00	\$196.00
04J71-30	96 Deep Well Plates	5	\$196.00	\$980.00
04J71-045	M2000 Biohazard Bags	3	\$35.00	\$105.00
04J71-093	m2000rt Instrument Optical Calibration Kit IVD	1	\$295.00	\$295.00
		Sub Total		\$22,913.00
<i>*The above estimated volumes and totals were based on the estimated number of annual HIV tests projected at 3,520 and a m2000 run size of 48 tests.</i>				

The quantities of products indicated above in Section D are estimated annual usage during the agreement period. The County does not guarantee, whether expressed or implied, ordering the estimated quantity of the products, but reserves the right to order at any lesser or greater quantity.

Exhibit C

Insurance Requirement

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
- d. 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 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.

Exhibit D

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 Abbott Molecular Inc. "Business Associate" pursuant to the terms of the Agreement and this amendment ("Business Associate Agreement" or "BAA"); and

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("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") and other applicable law;

WHEREAS, Covered Entity and Business Associate are parties to one or more agreements existing as of the effective date of this Addendum (the "Contract") whereby Business Associate provides services to Covered Entity (the "Services"); and

WHEREAS, as part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require Covered Entity to enter into a contract containing specific requirements with 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 Addendum.

In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

I. Definitions

Terms used, but not otherwise defined, and terms with initial capital letters in this provision of the Agreement have the same meaning as defined under the Health Insurance Portability and Accountability Act of 1996, 42 USC §§ 1320d et seq. ("HIPAA") and the implementing regulations and with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("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") and other applicable laws.

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

Business Associate – 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, and 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 HITECT 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 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].

Protected Information shall mean PHI provided by Santa Clara County to Business Associate or created or received by Business Associate on Santa Clara County'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).

II. Duties & Responsibilities of Business Associate

a. Permitted Uses. Business Associate shall not use Protected Information except for the purpose of performing Business Associate's obligations under the Contract and as permitted under the Contract and Addendum and as Required by Law. Further, Business Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule 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 CE [45 C.F.R. Sections 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 Contract and as permitted under the Contract and Addendum and as Required by Law. Business Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by Covered Entity. However, Business Associate 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 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 Addendum 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 10 calendar days 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), 164.504(e)(2)(i)(B), 164.504(e)(2)(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. Business Associate shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient 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)]. 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); however, this prohibition shall not affect payment by CE to Business Associate for services provided pursuant to the Contract.

d. Appropriate Safeguards. Business Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Contract that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, 164.312 and 164.316. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. Business Associate shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316 [42 U.S.C. Section 17931].

e. Reporting of Improper Access, Use or Disclosure. Business Associate shall report to Covered Entity in writing of any access, use or disclosure of Protected Information not permitted by the Contract and Addendum, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than 10 calendar days after discovery [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)]. 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) a description of the types of PHI that were involved in the breach, (3) any steps individuals should take to protect themselves from potential harm resulting from the breach, (4) 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 (5) 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. Section 164.410] Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

f. Business Associate's Agents. Business Associate shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree to in writing restrictions and conditions no less restrictive than those that apply to Business Associate with respect to such PHI and implement the safeguards required by paragraph c above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. 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 (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).

g. Access to Protected Information. Business Associate and Covered Entity agree that Business Associate will not maintain a Designated Record Set of Covered Entity; therefore,

Covered Entity agrees not to make requests to Business Associate for access to or amendment of PHI in a Designated Record Set; provided, however, that if Business Associate maintains a Designated Record Set at any time, 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 C.F.R. Section 164.504(e)(2)(ii)(E)]. If Business Associate maintains an Electronic Health Record, Business Associate 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).

h. Electronic PHI. If Business Associate receives, creates, transmits or maintains EPHI on behalf of COVERED ENTITY, Business Associate 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 EPHI 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 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."

i. Amendment of PHI. Within ten (10) days of receipt of a request from Santa Clara County for an amendment of Protected Information or a record about an individual contained in a Designated Record Set of Covered Entity maintained by Business Associate, if any, Business Associate or its agents or subcontractors shall make such Protected Information available to Santa Clara County for amendment and incorporate any such amendment to enable Santa Clara County 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 Santa Clara County 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. Promptly upon any disclosure of Protected Information for which Santa Clara County is required to account to an individual, Business Associate and its agents or subcontractors shall make available to Santa Clara County the information required to provide an accounting of disclosures to enable Santa Clara County to fulfill its obligations under the Privacy Rule, and the HITECH Act, as determined by Covered Entity. Business Associate agrees to implement a process that allows for an accounting 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. In the event that the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall within five (5) days of a request forward it to Santa Clara County in writing. 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 Agreement.

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 Santa Clara County 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.

Business Associate shall provide to Santa Clara County a copy of any Protected Information that Business Associate provides to the Secretary concurrently with providing such Protected Information 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 necessary to accomplish the purpose of the request, use, or disclosure. Business Associate understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."

m. Data Ownership. Business Associate acknowledges that Business Associate has no ownership rights with respect to the Protected Information.

n. Breach Pattern or Practice by Covered Entity. If the Business Associate knows of a pattern of activity or practice of the Santa Clara County that constitutes a material breach or violation of the Covered Entity's obligations under the Contract or Addendum or other arrangement, the Business Associate shall provide written notice to Covered Entity with an opportunity for Covered Entity to cure the breach. If the breach is not cured within fifteen (15) business days of notice to COVERED ENTITY, Business Associate must terminate the Contract or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary of DHHS.

o. Audits, Inspection and Enforcement. Within ten (10) days of a written request by CE, Business Associate and its agents or subcontractors shall allow Santa Clara County 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 Addendum for the purpose of determining whether Business Associate has complied with this Addendum; provided, however, that (i) Business Associate and Santa Clara County shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) Santa Clara County shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Santa Clara County has access during the course of such inspection; and (iii) Santa Clara County shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate.

The fact that Santa Clara County 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 this Addendum, nor does CE'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 CE's enforcement rights under the Contract or Addendum, Business Associate shall notify Santa Clara County within ten (10) 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. Upon Covered Entity's knowledge of a material breach of this Addendum, Covered Entity shall provide written notice to Business Associate and to the extent permitted by law, Covered Entity shall provide Business Associate an opportunity to cure the breach. Provided that a cure period is permitted by law, if the breach is not cured within fifteen (15) business days of notice by Covered Entity to Business Associate, Covered Entity may terminate the Contract with ten (10) days written notice to Business Associate; provided, however, that Covered Entity shall be responsible for payment for Services provided prior to the effective date of termination.

b. Santa Clara County may terminate the Contract, effective immediately, if (i) Business Associate is in violation in a criminal proceeding for a violation of HIPAA, the HITECH Act, 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, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceedings in which the party has been joined.

c. Effect of Termination. Upon termination of the Contract 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, unless otherwise required or permitted by law, the Contract or other agreement of the Parties. If the Parties determine that the return or destruction is not feasible, as determined by Covered Entity, Business Associate shall continue to extend the protections of Section 2 of this Addendum 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 destruction of the PHI is necessary, Business Associate shall certify in writing to Santa Clara 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 County for any breach of Business Associate's privacy or security obligations under the Agreement, including any fines and assessments that may be made against SCVHHS or the Business Associate for any privacy breaches or late reporting.

b. Disclaimer. The County of Santa Clara makes no warranty or representation that compliance by Business Associate with this Addendum, 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 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 Contract of Addendum 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 laws relating to the security or confidentiality of PHI. The parties understand and agree that Santa Clara County must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. Santa Clara County may terminate the 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 Santa Clara County

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 sufficient to satisfy the standards and requirements of applicable laws.

e. No Third-Party Beneficiaries. Nothing express or implied in the Contract or Addendum is intended to confer, nor shall anything herein confer, upon any person other than CE, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

f. Effect on Contract. Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Contract shall remain in force and effect.

g. Interpretation. The provisions of this Addendum shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. This Addendum and the Contract 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 Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

h. Survivorship. The respective rights and responsibilities of Business Associate related to the handling of PHI survive termination of this Agreement.

Exhibit E

Vendor Remote Access and User Responsibility

1. Scope of Access

a. "Remote Access" is the act of accessing County of Santa Clara ("County") systems from a non-County network infrastructure. "Systems" include personal computers, workstations, servers, mainframes, phone systems, and/or any device with network capabilities (e.g., a workstation with an attached modem, routers, switches, laptop computers, handheld devices).

b. County hereby grants Remote Access privileges for Contractor to access the following County systems, at the locations listed, collectively referred to as "IS," in accordance with the terms of the Agreement:

County Systems: _____

c. All other forms of access to the named Systems, or to any County System that is not specifically named, is prohibited.

d. Remote Access is granted for the purpose of Contractor providing services and performing its obligations as set forth in the Agreement including, but not limited to, supporting Contractor-installed programs. Any access to IS and/or County data or information that is not specifically authorized under the terms of this Agreement is prohibited and may result in contract termination and any penalty allowed by law.

e. County will review the scope of Contractor's Remote Access rights periodically. In no instance will Contractor's Remote Access rights be reduced, limited or modified in a way that prevents or delays Contractor from performing its obligations as set forth in the Agreement. Any modifications to Remote Access rights must be mutually agreed to in writing by County and Contractor.

2. Security Requirements

a. Contractor will not install any Remote Access capabilities on any County owned or managed system or network unless such installation and configuration is approved in writing by County's and Contractor's respective designees.

b. Contractor may only install and configure Remote Access capabilities on County systems or networks in accordance with industry standard protocols and procedures, which must be reviewed and approved by County's designee.

c. Contractor will only Remotely Access County systems, including access initiated from a County system, if the following conditions are met:

1. Contractor will submit documentation verifying its own network security mechanisms to County for County's review and approval. The County requires advanced written

approval of Contractor's security mechanisms prior to Contractor being granted Remote Access.

2. Contractor Remote Access must include the following minimum control mechanisms:

- a. Two-Factor Authentication: An authentication method that requires two of the following three factors to confirm the identity of the user attempting Remote Access. Those factors include: 1) something you possess (e.g., security token and/or smart card); 2) something you know (e.g., a personal identification number (PIN)); or 3) something you are (e.g., fingerprints, retina scan). The only exceptions are County approved County site to Contractor site Virtual Private Network (VPN) infrastructure.
- b. Centrally controlled authorizations (permissions) that are user specific (e.g., access lists that limit access to specific systems or networks).
- c. Audit tools that create detailed records/logs of access attempts.
- d. All Contractor systems used to Remotely Access County systems must have industry-standard anti-virus and other security measures that might be required by the County (e.g., software firewall) installed, configured, and activated.
- e. Access must be established through a centralized collection of hardware and software centrally managed and controlled by County's and Contractor's respective designees.

3. Monitoring/Audit

County will monitor access to, and activities on, County owned or managed systems and networks, including all Remote Access attempts. Data on all activities will be logged on a County managed system and will include the date, time, and user identification.

4. Copying, Deleting or Modifying Data

Contractor is prohibited from copying, modifying, or deleting any data contained in or on any County IS unless otherwise stated in the Agreement or unless Contractor receives prior written approval from County. This does not include data installed by the Contractor to fulfill its obligations as set forth in the Agreement.

5. Connections to Non-County Networks and/or Systems

Contractor agrees to make every effort to protect County's data contained on County owned and/or managed systems and networks within Contractor's control from unauthorized access. Prior written approval is required before Contractor may access County networks or systems from non-County owned and/or managed networks or systems. Such access will be made in accordance with industry standard protocols and procedures as mutually agreed upon and will be approved in writing by County in a timely manner. Remote Access must include the control mechanisms noted in Paragraph 2.c.2 above.

6. Person Authorized to Act on Behalf of Parties

The following persons are the designees for purposes of this Agreement:

Contractor: Title/ Designee _____

County: Title/ Designee _____

Either party may change the aforementioned names and or designees by providing the other party with no less than three (3) business days prior written notice.

7. Remote Access Provisions

Contractor agrees to the following:

- a. Only staff providing services or fulfilling Contractor obligations under the Agreement will be given Remote Access rights.
- b. Any access to IS and/or County information that is not specifically authorized under the terms of this Agreement is prohibited and may result in contract termination and any other penalty allowed by law.
- c. An encryption method reviewed and approved by the County will be used. County is solely responsible and liable for any delay or failure of County, as applicable, to approve the encryption method to be used by Contractor where such delay or failure causes Contractor to fail to meet or perform, or be delayed in meeting or performing, any of its obligations under the Agreement.
- d. Contractor will be required to log all access activity to the County. These logs will be kept for a minimum of 90 days and be made available to County no more frequently than once every 90 days.

8. Remote Access Methods

a. All forms of Remote Access will be made in accordance with mutually agreed upon industry standard protocols and procedures, which must be approved in writing by the County.

b. A Remote Access Back-Up Method may be used in the event that the primary method of Remote Access is inoperable.

c. Contractor agrees to abide by the following provisions related to the Primary and (if applicable) Backup Remote Access Methods selected below. (Please mark appropriate box for each applicable Remote Access Method; if a method is inapplicable, please check the box marked N/A).

1. VPN Site-to-Site **Primary** **Backup** **N/A**

The VPN Site-to-Site method involves a VPN concentrator at both the vendor site and at the County, with a secure "tunnel" opened between the two concentrators. If using the VPN Site-to-Site Method, Contractor support staff will have access to the designated

software, devices and systems within the County, as specified above in Paragraph 1.b, from selected network-attached devices at the vendor site.

2. VPN Client Access **Primary** **Backup** **N/A**

In the VPN Client Access method, a VPN Client (software) is installed on one or more specific devices at the Contractor site, with Remote Access to the County (via a County VPN concentrator) granted from those specific devices only.

A CryptoCard will be issued to the Contractor in order to authenticate Contractor staff when accessing County IS via this method. The Contractor agrees to the following when issued a CryptoCard authentication device:

- a. Because the CryptoCard allows access to privileged or confidential information residing on the County's IS, the Contractor agrees to treat the CryptoCard as it would a signature authorizing a financial commitment on the part of the Contractor.
- b. The CryptoCard is a County-owned device, and will be labeled as such. The label must remain attached at all times.
- c. The CryptoCard must be kept in a secured environment under the direct control of the Contractor, such as a locked office where public or other unauthorized access is not allowed.
- d. If the Contractor's remote access equipment is moved to a non-secured site, such as a repair location, the CryptoCard will be kept under Contractor control.
- e. The CryptoCard is issued to an individual employee of the Contractor and may only be used by the designated individual.
- f. If the CryptoCard is misplaced, stolen, or damaged, the Contractor will notify County by phone within one (1) business day.
- g. Contractor agrees to use the CryptoCard as part of its normal business operations and for legitimate business purposes only.
- h. The CryptoCard will be issued to Contractor following execution of this Agreement. The CryptoCard will be returned to the County's designee within five (5) business days following contract termination, or upon written request of the County for any reason. Contractor will notify County's designee within one working day of any change in personnel affecting use and possession of the CryptoCard. Contractor will obtain the CryptoCard from any employee who no longer has a legitimate need to possess the CryptoCard. Lost or non-returned CryptoCards will be billed to the Contractor in the amount of \$300 per card.
- i. Contractor will not store password documentation or PINs with CryptoCards.
- j. Contractor agrees that all employees, agents, contractors, and subcontractors who are issued the CryptoCard will be made aware of the responsibilities set forth in this Agreement in written form. Each person having possession of a CryptoCard will execute this Agreement where indicated below certifying that they have read and understood the terms of this Agreement.

3. County-Controlled VPN Client Access **Primary** **Backup** **N/A**

This form of Remote Access is similar to VPN Client access, except that the County will maintain control of the CryptoCard authentication token and a PIN number will be provided to the Contractor for use as identification for Remote Access purposes. When

the Contractor needs to access County IS, the Contractor must first notify the County's designee.

The County's designee will verify the PIN number provided by the Contractor. After verification of the PIN the County's designee will give the Contractor a one-time password which will be used to authenticate Contractor when accessing the County's IS. Contractor agrees to the following:

- a. Because the PIN number allows access to privileged or confidential information residing on the County's IS, the Contractor agrees to treat the PIN number as it would a signature authorizing a financial commitment on the part of the Contractor.
- b. The PIN number is confidential, County-owned, and will be identified as such.
- c. The PIN number must be kept in a secured environment under the direct control of the Contractor, such as a locked office where public or other unauthorized access is not allowed.
- d. If the Contractor's remote access equipment is moved to a non-secured site, such as a repair location, the PIN number will be kept under Contractor control.
- e. The PIN number can only be released to an authorized employee of the Contractor and may only be used by the designated individual.
- f. If the PIN number is compromised or misused, the Contractor will notify the County's designee within one (1) business day.
- g. Contractor will use the PIN number as part its normal business operations and for legitimate business purposes only. Any access to IS and/or County data information that is not specifically authorized under the terms of this Agreement is prohibited and may result in contract termination and any other penalty allowed by law.
- h. The PIN number will be issued to Contractor following execution of this Agreement.
- i. The PIN number will be inactivated by the County's designee within five (5) business days following contract termination, or as required by the County for any reason.

4. Manually Switched Dialup Modem **Primary** **Backup** **N/A**

Although not generally used, the Contractor may be provided Remote Access to County IS using a dialup modem. Contractor agrees to the following if using Switched Dialup Modem access:

- a. Contractor will use reasonable efforts to notify the County's Technical Services Manager or designee at least ½ hour prior to access to allow County to activate the Switched Dialup Modem connection. Contractor will give the estimated time that the connection will be required, and specify when the access can be deactivated by County.
- b. County acknowledges that Contractor may not be able to provide certain of its services (including, but not limited to, implementation services, maintenance and support (including Standard Support Services) and training services) using a Switched Dialup Modem connection.

- c. County is solely responsible and liable for any inability or delay in Contractor performing its obligations under the Agreement where such inability or delay is caused by the use of a Switched Dialup Modem connection.

Signatures of Contractor Employees receiving CryptoCards (if issued by County):

CONTRACTOR: _____
_____ [TYPE NAME HERE]

Date: _____
[TITLE]

CONTRACTOR: _____
_____ [TYPE NAME HERE]

Date: _____
[TITLE]

CONTRACTOR: _____
_____ [TYPE NAME HERE]

Date: _____
[TITLE]

INFORMATION TECHNOLOGY USER RESPONSIBILITY STATEMENT AND INSTRUCTIONS

In May 1995 the Board of Supervisors charged each County organization with the responsibility for ensuring that all individuals within the organization had read and signed a statement of responsibility concerning use of the County's networks and information systems. This Statement is intended as a minimum Statement of User Responsibility, and individual County Agencies and Departments may make additions to strengthen it as necessary to meet any special requirements within their own environments.

- The User Responsibility Statement must be signed by everyone who might reasonably require access to a County network and/or information system, which includes County employees, consultants, contractors, sub-contractors, vendors, volunteers and any other authorized individual who is permitted access. All Users who are allowed to access County resources remotely must also sign an additional attachment specifically related to remote access; this is provided as Attachment C.
- Each County organization should identify a "User Responsibility Statement Administrator." This is an occasional personnel function that should NOT be filled by a member of the organization's Information System's support staff. A good choice would be a personnel administrator or office staff responsible for other routine personnel issues. The User Responsibility Statement Administrator is responsible for the following tasks:
 1. Identifying those employees, contractors and others within the organization that will need to read and sign the Statement.
 2. Managing the signing process, including arranging for any briefings that are held in conjunction with users signing the Statement.
 3. Maintaining the signed Statements.
 4. Documenting in the Agency / Departmental IT Security Plan that the Statements have been signed by all appropriate employees, contractors, and others.
 5. Ensuring that new employees, contractors, etc. read and sign the Statement.
- County organizations must identify all individuals who need to sign the Statement. For most organizations, the easiest approach would be to have everyone read and sign a Statement, but in some unusual cases it might make sense to exclude specific workgroups who clearly will never have the need to access a County computer or network.
- Following identification of the appropriate User communities, the Statements should be distributed for reading and signing. One possible method for accomplishing this is an all-staff briefing session, during which staff, contractors, etc. are presented with an overview of the Statement and then asked to sign it.
- It should be noted that individuals who sign the Statement are not required to agree with all of the Statement's provisions but that by signing they are acknowledging that they have read the Statement and understood its contents. The signer also acknowledges that violation of any of the Statement's provisions may result in disciplinary action and/or criminal prosecution.
- In rare situations where an individual refuses to sign the Statement the responsible Agency / Department may choose to read the Statement to the involved individual who will be required to verbally acknowledge understanding with two or more responsible managers present who will attest in writing that the reading and verbal attestation of understanding occurred. Failing a verbal acknowledgement of understanding the involved individual shall be denied access to all County information systems and networks.
- Each County organization is responsible for storing and maintaining all of the signed Statements. It is required that all County organizations have their users re-execute the

Statement whenever there is an update or other change to the Statement. The Department Heads will be notified by the CIO's office of any updates or other changes to the Statement. It is recommended that all County organizations have their users re-execute the Statement annually. Also, all users that have remote access capabilities into the County must read and sign Attachment C of the Statement.

INFORMATION TECHNOLOGY USER RESPONSIBILITY STATEMENT

This User Responsibility Statement establishes a uniform, County-wide set of minimum responsibilities associated with being granted access to County information systems and/or County networks.

Definitions

County information systems and networks include all County-owned, rented, or leased desktop computers, laptop computers, handheld devices (including smart phones, wireless PDA's and Pocket PC's), equipment, networks, application systems, data bases and software; these items are typically under the direct control and management of County information system staff. Also included are information systems and networks under control and management of a service provider for use by the County.

Users includes full-time and part-time employees who are on the permanent County payroll, as well as other authorized individuals such as contractors, sub-contractors, consultants, temporary personnel, unpaid volunteers and any other authorized individual permitted access to County information systems and/or networks.

County-owned information/data is any information or data that is transported across a County network, or that resides in a County-owned information system, or on a network or system under control and management of a service provider for use by the County. This information/data is the exclusive property of the County of Santa Clara, unless excepted through constitutional provision, State or Federal statute, case law, or contract.

A public record is any writing, including electronic documents, relating to the conduct of the people's business.

1. General Code of Responsibility

The following General Code of Responsibility defines the basic standards for user interaction with County information systems and networks. All Users of County information systems and networks are required to comply with these standards.

- 1.1 Users are personally responsible for knowing and understanding the appropriate standards for User conduct, and are personally responsible for any actions they take that do not comply with County policies and standards.
- 1.2 Users must comply with County standards for password definition, use, and management. If a User is unclear as to the appropriate standards, it is the responsibility of the User to ask for guidance from their information systems support staff or Agency / Department management.
- 1.3 Users may not install, configure, or use any modem, any connection to a non-County network or system, or any wireless device, on any County system or network unless authorized to do so in writing by their designated departmental information systems support staff. If authorized to install, configure or use such a device or capability, Users must comply with all additional, applicable County standards designed to ensure the privacy and protection of data.
- 1.4 All connections between County information systems/networks and non-County systems/networks, including the Internet, must be approved by the County Chief Information Officer (CIO), or designee, and by the head of the involved Agency/Department. Users, including members of the County's information system support staff, are prohibited from implementing such connections without obtaining this approval in writing.
- 1.5 No personally owned desktop computer, laptop computer, handheld and/or wireless device, or any other device may be attached to a County network unless such attachment is authorized in writing by designated departmental information systems support staff.
- 1.6 Users must not attempt to circumvent legal guidelines on software use and licensing by copying software. If a User is unclear as to whether a piece of software may be legitimately copied, it is the responsibility of the User to check with designated departmental information systems support staff.
- 1.7 Users may not install software on any County system unless specifically authorized to do so in writing by designated departmental information systems support staff.

- 1.8 Users are asked to be aware of security issues, and are encouraged to report incidents of security breaches (e.g., installation of an unauthorized device) to designated information systems support staff.
- 1.9 Users must understand and respect the sensitivity, privacy and confidentiality aspects of all County-owned information. In particular:
- Users must not attempt to access County systems or information unless authorized to do so, and there is a legitimate business need for such access.
 - Users must not disclose information to anyone who does not have a legitimate need for that information.
 - Users must not make or store printed or media-based (e.g., CD or floppy disk) copies of information unless it is a necessary part of that user's job.
- 1.10 Users must understand and respect the importance of County-owned data as a valuable asset. In particular:
- Users must not change or delete data or information unless performing such changes or deletions is a legitimate part of the user's job function.
 - Users must avoid actions that might introduce malicious software, such as viruses or worms, onto any County system or network.
- 1.11 Users should be aware that electronic information transported across any County network, or residing in any County information system, is potentially subject to access by technical support staff, other County Users, and the general public. There are within the County IT environment systems and networks that have been made secure and private but in the absence of such special measures Users should not presume any level of data privacy for information transmitted over a County network, or stored within a County information system.
- 1.12 In general, Users must not use County systems or networks for personal activities that cannot be shown to either facilitate work tasks or increase job productivity. However, reasonable incidental (de minimus) personal use of County IT resources, such as Internet access and email, is allowed as long as such use does not interfere with the performance of work duties or the operation of the County's information systems. If a User is unclear as to appropriate personal uses, it is the responsibility of the User to ask for guidance from their Agency / Department management.
- 1.13 All information resources on any County information system or network are the property of the County and are therefore subject to County policies regarding acceptable use. No employee or other authorized User may use any County owned network, computer system, handheld and/or wireless device, cell phone or any other device or data for the following purposes:
- Personal profit, including commercial solicitation or conducting or pursuing their own business interested or those of another organization.
 - Unlawful or illegal activities, including the downloading of licensed material without authorization, or downloading copyrighted material from the Internet without the publisher's permission.
 - To access, create, transmit, print, download or solicit material that is or may be construed to be harassing or demeaning toward any individual or group for any reason, including on the basis of sex, age, race, color, national origin, creed, disability, political beliefs, organizational affiliation, or sexual orientation.
 - To access, create, transmit, print, download or solicit sexually-oriented messages or images.
 - The knowing propagation or downloading of viruses or other contaminants.
- 1.14 The dissemination of hoaxes, chain letters, or advertisements. Users that are employed by, or otherwise belong to, a HIPAA impacted Agency / Department are responsible for understanding and carrying out their responsibilities and duties as identified in the County HIPAA policies and procedures training.
- 1.15 Users should refer to the County's email retention policy for guidance with respect to the retention of email messages.

- 1.16 Users may not configure, access, use, or participate in those Internet services that have been prohibited by County policy, including but not limited to Internet Instant Messaging services (such as AOL Instant Messaging), Internet email services (such as hotmail), and peer-to-peer networking services (such as Kazaa), unless specifically authorized to do so in writing. All use of such services, even at a Departmental level, is subject to written approval and authorization procedures by the Department Head and the County CIO.
- 1.17 Users shall not use an internal County email account assigned to another individual to either send or receive emails.
- 1.18 Users shall not configure their email account to automatically forward email messages to an Internet or other external email system unless specifically authorized to do so in writing by their Department Head and the County CIO. Email messages that are manually forwarded must not contain information that is classified as confidential or restricted.

Acknowledgement of Receipt

This statement hereby incorporates Attachment A - Board of Supervisors Approved policy on "E-Mail", Attachment B – Board of Supervisors Approved Policy on "Internet Usage" and Attachment C - Additional Responsibilities for Users Accessing County IT Assets from a Non-County (Remote) Locations. Attachment C only applies to individuals that have been granted remote access privileges and should only be signed by those specific individuals. By signing this Statement, the following individual signifies that the County's User Responsibility Statement has been read and its contents understood. The signer also acknowledges that violation of any of its provisions may result in disciplinary action, leading up to and including termination and/or criminal prosecution.

The signer also acknowledges that this Statement will still be in effect following any transfer to another County Agency or Department, and that all of its provisions will continue to apply to the undersigned.

User Signature _____

Print User Name _____

Agency/Department _____

Date Signed _____