



Contract Number

SAP Number

Arrowhead Regional Medical Center

Department Contract Representative	<u>William L. Gilbert</u>
Telephone Number	<u>909-580-0056</u>
Contractor	<u>Forward Advantage, Inc.</u>
Contractor Representative	<u>Todd Ledyard</u>
Telephone Number	<u>877-636-7927</u>
Contract Term	<u>January 24, 2023 through January 23, 2026</u>
Original Contract Amount	<u>Not to exceed \$118,224</u>
Amendment Amount	<u></u>
Total Contract Amount	<u>Not to exceed \$118,224</u>
Cost Center	<u>8480</u>

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, County conducted a competitive process to find a vendor to provide the Products and Services that are the subject of this Contract, and

WHEREAS, County desires that such Products and/or Services be provided by Forward Advantage, Inc. (Contractor) and Contractor agrees to provide these Products and perform these Services as set forth below;

NOW, THEREFORE, the County and Contractor mutually agree to the following terms and conditions:

This Contract consists of these General Terms and the documents that are referenced and hereby incorporated as though fully set forth herein by a checked box below, and attachment hereto:

- Attachment A – HARDWARE PURCHASE TERMS
- Exhibit B-1 – SOFTWARE QUOTATION AND PRICES
- Attachment C – SOFTWARE SUPPORT AND MAINTENANCE TERMS
- Attachment D – CLOUD SERVICES TERMS
- Attachment E – BUSINESS ASSOCIATE AGREEMENT
- Attachment E-1 – Business Associate Addendum for Cloud Services

In the event of any inconsistency between this Contract and any forms, attachments, statements of works, or specifications which may be incorporated into this Contract, the following order of precedence shall apply: (i) this Contract; (ii) Attachments to this Contract, as indicated above; and (iii) price lists, SOWs, SLAs and other documents attached hereto or incorporated herein.

A. DEFINITIONS

Unless elsewhere defined in this Contract, the following capitalized terms shall have the meaning ascribed herein:

- A.1** "Affiliates": collectively, municipalities, school districts, and other tax districts within County
- A.2** "County": San Bernardino County
- A.3** "Contractor": the individual or entity identified as providing the Products and/or Services
- A.4** "DRM": County's Department of Risk Management
- A.5** "Effective Date": the date of execution of the Contract
- A.6** "EFT": Electronic funds transfer.
- A.7** "P.O.": a purchase order specifying the types and quantity of Products, Services or Software ordered, the method of delivery, the delivery date required and the location to which Products or Software are to be shipped or the Services are to be provided.
- A.8** "Products": goods in the technology and consumer electronics category
- A.9** "Services": professional consulting, which may include implementation, design, customization, maintenance, help desk or other services necessary or desired by County as specified in an SOW.
- A.10** "Software": computer programs, procedures, rules, routines, or subroutines and any associated documentation pertaining to the operation of a computer system, including software designed to fill specific needs of a user; software that controls the execution of programs, and software that provides services such as resource allocation, scheduling, input/output control, and data management; application-independent software that supports the running of application software; software designed to facilitate the operation and maintenance of a computer system and its associated programs; and computer programs or routines designed to perform some general support function required by other application software, by the operating system, or by the system users, such as formatting electronic media, making copies of files, or deleting files.
- A.11** "SOW": a statement of work or work order that identifies Services provided by Contractor, including a detailed task list or specifications, the estimated period of performance, the fixed price or hourly rate to be charged for the Services, together with any milestones, acceptance criteria and other information regarding the scope of work, as mutually agreed by the Parties.
- A.12** "PAM": Privileged Access Management

B. GENERAL CONTRACT REQUIREMENTS

B.1 Recitals

The recitals set forth above are true and correct and incorporated herein by this reference.

B.2 Contract Amendments

Contractor agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Contractor and County.

B.3 Contract Assignability

Without the prior written consent of the County, the Contract is not assignable by Contractor either in whole or in part.

B.4 Contract Exclusivity

This is not an exclusive Contract. The County reserves the right to enter into a contract with other contractors for the same or similar services. The County does not guarantee or represent that the Contractor will be permitted to perform any minimum amount of work, or receive compensation other than on a per order basis, under the terms of this Contract.

B.5 Attorney's Fees and Costs

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

B.6 Background Checks for Contractor Personnel

Contractor shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (b) do not use legal or illegal substances in any manner which will impact their ability to provide Services to the County; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by the County and not in violation of applicable law, Contractor shall conduct a background check, at Contractor's sole expense, on all its personnel providing Services. If requested by the County, Contractor shall provide the results of the background check of each individual to the County. Such background check shall be in the form generally used by Contractor in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Contractor personnel who do not meet the County's hiring criteria, in County's sole discretion, shall not be assigned to work on County property or Services, and County shall have the right, at its sole option, to refuse access to any Contract personnel to any County facility.

B.7 Change of Address

Contractor shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

B.8 Choice of Law

This Contract shall be governed by and construed according to the laws of the State of California.

B.9 Compliance with County Policy

In performing the Services and while at any County facilities, Contractor personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the County regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the County; and (d) abide by all laws applicable to the County facilities and the provision of the Services, and all amendments and modifications to each of the documents listed in subsections (b), (c), and (d) (collectively, "County Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to Contractor or Contractor personnel or may be made available to Contractor or Contractor personnel by conspicuous posting at a County facility, electronic posting, or other means generally used by County to disseminate such information to its employees or contractors. Contractor shall be responsible for the promulgation and distribution of County Policies to Contractor personnel to the extent necessary and appropriate. County shall have the right to require Contractor's employees, agents, representatives and subcontractors to exhibit identification credentials issued by County in order to exercise any right of access under this Contract.

B.10 Confidentiality

Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, regulations have been promulgated governing the privacy of individually identifiable health information. Contractor acknowledges that it is a covered entity and subject to the requirements of HIPAA and HITECH, and their implementing regulations. Contractor agrees to fully comply with the terms of HIPAA and HITECH, and regulations promulgated thereunder, and to ensure any Subcontractors utilized to fulfill Services pursuant to this Contract comply with said provisions. Contractor further agrees to comply with the requirements of all other applicable federal and state laws that pertain to the protection of health information.

B.11 Primary Point of Contact

Contractor will designate an individual to serve as the primary point of contact for the Contract. Contractor or designee must respond to County inquiries within two (2) business days. Contractor shall not change the primary contact without written acknowledgement to the County. Contractor will also designate a back-up point of contact in the event the primary contact is not available.

B.12 County Internship Initiative

Contractor agrees to be contacted by the County to solicit its participation in an internship initiative known as GenerationGo! Career Pathways, involving the potential placement and hiring of interns by Contractor's business. Contractor is encouraged, and agrees to make good faith efforts, to utilize the County's program to aid

the **County's Vision for a skilled workforce and jobs that create countywide prosperity**, and its **goal to Create, Maintain and Grow Jobs and Economic Value in the County**. The County's objective with its internship initiative is to focus on training, education, employment and support services to develop a more highly-educated and trained workforce. When participating in the County's internship initiative, the Contractor remains an independent contractor and shall not be construed as agents, officers, or employees of the County. More information about the County's GenerationGo! Career Pathways Program can be located at <http://wp.sbcounty.gov/workforce/career-pathways/>.

B.13 County Representative

The *ARMC Director* or his/her designee shall represent the County in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services/Scope of Work by Contractor. If this contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

B.14 Damage to County Property

Contractor shall repair, or cause to be repaired, at its own cost, all damages to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Contractor or its employees or agents. Such repairs shall be made immediately after Contractor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence. If the Contractor fails to make timely repairs, the County may make any necessary repairs. The Contractor, as determined by the County, shall repay all costs incurred by the County for such repairs, by cash payment upon demand, or County may deduct such costs from any amounts due to the Contractor from the County, as determined at the County's sole discretion.

B.15 Debarment and Suspension

Contractor certifies that neither it nor its principals or subcontractors is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Contractor further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

B.16 Drug and Alcohol Free Workplace

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, the Contractor agrees that the Contractor and the Contractor's employees, while performing service for the County, on County property, or while using County equipment:

- B.16.1** Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
- B.16.2** Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- B.16.3** Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Contractor or Contractor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

The Contractor shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County. The County may terminate for default or breach of this Contract and any other Contract the Contractor has with the County, if the Contractor or Contractor's employees are determined by the County not to be in compliance with above.

B.17 Duration of Terms

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

B.18 Employment Discrimination

During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375,

11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

B.19 Environmental Requirements

In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires Contractor to use recycled paper for any printed or photocopied material created as a result of this Contract. Contractor is also required to use both sides of paper sheets for reports submitted to the County whenever practicable. To assist the county in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), Contractor must be able to annually report the County's environmentally preferable purchases. Contractor must also be able to report on environmentally preferable goods and materials used in the provision of their service to the County, utilizing a County approved form.

B.20 Improper Influence

Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Contractor or officer or employee of the Contractor.

B.21 Improper Consideration

Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract. The County, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded. Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

B.22 Informal Dispute Resolution

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

B.23 Legality and Severability

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

B.24 Licenses, Permits and/or Certifications

Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. The Contractor shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. Contractor will notify County immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

B.25 Material Misstatement/Misrepresentation

If during the course of the administration of this Contract, the County determines that Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.

B.26 Mutual Covenants

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of “good faith” and “fair dealing”.

B.27 Nondisclosure

Contractor shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the County to Contractor or an agent of Contractor or otherwise made available to Contractor or Contractor’s agent in connection with this Contract; or, (2) acquired, obtained, or learned by Contractor or an agent of Contractor in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialized and includes, but is not limited to, technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

B.28 Notice of Delays

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

B.29 Ownership of Documents

All documents, data, products, graphics, computer programs and reports prepared by Contractor pursuant to the Contract shall be considered property of the County upon payment for services (and products, if applicable). All such items shall be delivered to County at the completion of work under the Contract. Unless otherwise directed by County, Contractor may retain copies of such items.

B.30 Participation Clause

The County desires that Municipalities, School Districts, and other Tax Districts requiring the same services provided herein may at their option and through the County Purchasing agent, avail themselves of this Contract. Upon notice, in writing, the Contractor agrees to the extension of the terms of this contract with such governmental bodies as though they have been expressly identified in this contract, with the provisions that:

B.30.1 Such governmental body does not have and will not have in force any other contract for like purchases.

B.30.2 Such governmental body does not have under consideration for award any other bids or quotations for like purchases.

Such governmental body shall make purchases directly through and to the Contractor. The County will not be liable for any such purchase made between the Contractor and another governmental body who avails themselves of this contract.

B.31 Air, Water Pollution Control, Safety and Health

Contractor shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

B.32 Records

Contractor shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Contract. All records relating to the Contractor’s personnel, consultants, subcontractors, Services/Scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars, which state the administrative requirements, cost principles and other standards for accountancy.

B.33 Relationship of the Parties

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

B.34 Release of Information

No news releases, advertisements, public announcements or photographs arising out of the Contract or Contractor's relationship with County may be made or used without prior written approval of the County.

B.35 Representation of the County

In the performance of this Contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the San Bernardino County.

B.36 Strict Performance

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

B.37 Subcontracting

Contractor shall obtain County's written consent, which County may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the Services to County. At County's request, Contractor shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the County, resumes of proposed subcontractor personnel. Contractor shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in Section E. All approved subcontractors shall be subject to the provisions of this Contract applicable to Contractor Personnel. For any subcontractor, Contractor shall:

B.37.1 Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and

B.37.2 Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.

B.37.3 Include in the subcontractor's subcontract substantially similar terms as are provided in Sections B. General Contract Requirements and Section E. Insurance and Indemnification.

Upon expiration or termination of this Contract for any reason, County will have the right to enter into direct Contracts with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct Contracts with County.

B.38 Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Goods or Services provided under this Contract is served upon Contractor or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for County.

B.39 Termination for Convenience

The County reserves the right to terminate the Contract, for any reason, with a thirty (30) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the Contractor for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice Contractor shall promptly discontinue services unless the notice directs otherwise. Contractor shall deliver promptly to County and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

B.40 Time of the Essence

Time is of the essence in performance of this Contract and of each of its provisions.

B.41 Venue

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party and filed in another venue, the parties

hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

B.42 Conflict of Interest

Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Contractor shall make a reasonable effort to prevent employees, Contractor, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the County and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Contractor's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

B.43 Former County Administrative Officials

Contractor agrees to provide, or has already provided information on former San Bernardino County administrative officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

B.44 Disclosure of Criminal and Civil Procedures

The County reserves the right to request the information described herein from the Contractor. Failure to provide the information may result in a termination of the Contract. The County also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Contractor also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination. Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Contractor will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail. In addition, the Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Contractor will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail. For purposes of this provision "key employees" includes any individuals providing direct service to the County. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

B.45 Copyright

County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Contract shall acknowledge the San Bernardino County as the funding agency and Contractor as the creator of the publication. No such materials, or properties produced in whole or in part under this Contract shall be subject to private use, copyright or patent right by Contractor in the United States or in any other country without the express written consent of County. Copies of all educational and training materials, curricula, audio/visual aids, printer material, and periodicals, assembled pursuant to this Contract must be filed with the County prior to publication.

B.46 Artwork, Proofs and Negatives

Reserved

B.47 RESERVED

B.48 RESERVED

B.49 RESERVED

B.50 California Consumer Privacy Act

To the extent applicable, if Contractor is a business that collects the personal information of a consumer(s) in performing Services pursuant to this Contract, Contractor must comply with the provisions of the California Consumer Privacy Act (CCPA). (Cal. Civil Code §§1798.100, et seq.). For purposes of this provision, “business,” “consumer,” and “personal information” shall have the same meanings as set forth at Civil Code section 1798.140. Contractor must contact the County immediately upon receipt of any request by a consumer submitted pursuant to the CCPA that requires any action on the part of the County, including but not limited to, providing a list of disclosures or deleting personal information. Contractor must not sell, market or otherwise disclose personal information of a consumer provided by the County unless specifically authorized pursuant to terms of this Contract. Contractor must immediately provide to the County any notice provided by a consumer to Contractor pursuant to Civil Code section 1798.150(b) alleging a violation of the CCPA, that involves personal information received or maintained pursuant to this Contract. Contractor must immediately notify the County if it receives a notice of violation from the California Attorney General pursuant to Civil Code section 1798.155(b).

B. 51 Executive Order N-6-22 Russia Sanctions

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. “Economic Sanctions” refers to sanctions imposed by the U.S. government in response to Russia’s actions in Ukraine (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>), as well as any sanctions imposed under state law (<https://www.dgs.ca.gov/OLS/Ukraine-Russia>). The EO directs state agencies and their contractors (including by agreement or receipt of a grant) to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should it be determined that Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. Contractor shall be provided advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the County.

C. TERM OF CONTRACT

This Contract is effective as of January 24, 2023 and expires January 23, 2026 but may be terminated earlier in accordance with provisions of this Contract.

D. FISCAL PROVISIONS

- D.1** The maximum amount of payment under this Contract shall not exceed \$118,224, and shall be subject to availability of other funds to the County. The consideration to be paid to Contractor, as provided herein, shall be in full payment for all Contractor’s services and expenses incurred in the performance hereof, including travel and per diem.
- D.2** Invoices shall be issued with a net sixty (60) day payment term with corresponding Purchase Order number stated on the invoices.
- D.3** Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Contractor’s designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.
- D.4** County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The County shall only pay for any State or local sales

or use taxes on the services rendered or equipment and/or parts supplied to the County pursuant to the Contract.

- D.5** Costs for services under the terms of this Contract shall be incurred during the contract period except as approved by County. Contractor shall not use current year funds to pay prior or future year obligations.
- D.6** Funds made available under this Contract shall not supplant any federal, state or any governmental funds intended for services of the same nature as this Contract. Contractor shall not claim reimbursement or payment from County for, or apply sums received from County with respect to that portion of its obligations that have been paid by another source of revenue. Contractor agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of the County.
- D.7** Contractor shall adhere to the County's Travel Management Policy (8-02 and 08-02SP1) when travel is pursuant to this Contract and for which reimbursement is sought from the County. In addition, Contractor is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.

E. INDEMNIFICATION AND INSURANCE REQUIREMENTS

E.1 Indemnification

Contractor will indemnify, defend, and hold harmless County and its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any goods or services. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against County, or County receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, County will use reasonable efforts to notify Contractor promptly of such lawsuit, claim or election. However, County's failure to provide or delay in providing such notice will relieve Contractor of its obligations only if and to the extent that such delay or failure materially prejudices Consultant's ability to defend such lawsuit or claim. County will give Contractor sole control of the defense (with counsel reasonably acceptable to County) and settlement of such claim; provided that Contractor may not settle the claim or suit absent the written consent of County unless such settlement (a) includes a release of all claims pending against County, (b) contains no admission of liability or wrongdoing by County, and (c) imposes no obligations upon County other than an obligation to stop using the goods or services that are the subject of the claim. In the event that Contractor fails to or elects not to defend County against any claim for which County is entitled to indemnity by Contractor, then Contractor shall reimburse County for all reasonable attorneys' fees and expenses within thirty (30) days from date of invoice or debit memo from County. After thirty (30) days, County will be entitled to deduct any unpaid invoice or debit memo amount from any amounts owed by County to Contractor. This shall not apply to any judgment or settlement amount, which amounts County shall be entitled to notify, invoice or debit Contractor's account at any time; and County, at its sole discretion, may settle the claim or suit.

If, in Contractor's opinion, any goods or services become, or are likely to become, the subject of a claim of infringement of Intellectual Property Rights, Contractor may, at its option: (i) procure for County the right to continue using the goods or receiving the services; (ii) replace or modify the goods or services to be non-infringing, without incurring a material diminution in performance or function; or (iii) if neither of the foregoing is feasible, in the reasonable judgment of Contractor, County shall cease use of the goods or services upon written notice from Contractor, and Contractor shall provide County with a pro-rata refund of the unearned fees paid by County to Contractor for such goods or services.

The Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. The Contractor indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

E.2 Additional Insured

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The

additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

E.3 Waiver of Subrogation Rights

The Contractor shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.

E.4 Policies Primary and Non-Contributory

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

E.5 Severability of Interests

The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the County or between the County and any other insured or additional insured under the policy.

E.6 Proof of Coverage

The Contractor shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

E.7 Acceptability of Insurance Carrier

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

E.8 Deductibles and Self-Insured Retention

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

E.9 Failure to Procure Coverage

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County payments to the Contractor will be reduced to pay for County purchased insurance.

E.10 Insurance Review

Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt. Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

E.11 Types and Limits

The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so. Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

- E.11.1 Workers' Compensation/Employer's Liability** – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Contractor and all risks to such persons under this contract. If Contractor has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management. With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.
- E.11.2 Commercial/General Liability Insurance** – The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
- a. Premises operations and mobile equipment.
 - b. Products and completed operations.
 - c. Broad form property damage (including completed operations).
 - d. Explosion, collapse and underground hazards.
 - e. Personal injury.
 - f. Contractual liability.
 - g. \$2,000,000 general aggregate limit.
- E.11.3 Automobile Liability Insurance** – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. If the Contractor is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.
- E.11.4 Cyber Liability Insurance** - Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.
- E.11.5 Umbrella Liability Insurance** – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

F. RIGHT TO MONITOR AND AUDIT

- F.1** The County, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Contractor in the delivery of services provided under this Contract. Contractor shall give full cooperation, in any auditing or monitoring conducted. Contractor shall cooperate with the County in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the County.
- F.2** All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under this Contract or until all pending County, State and Federal audits are completed, whichever is later.

G. CORRECTION OF PERFORMANCE DEFICIENCIES

- G.1** Failure by Contractor to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.

- G.2** In the event of a non-cured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - G.2.1** Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County; and/or
 - G.2.2** Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach, which reimbursement shall not be entitled to later recovery; and/or
 - G.2.3** Withhold funds pending duration of the breach; and/or
 - G.2.4** Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to Item "b" of this paragraph; and/or
 - G.2.5** Terminate this Contract immediately and be relieved of the payment of any consideration to Contractor. In the event of such termination, the County may proceed with the work in any manner deemed proper by the County. The cost to the County shall be deducted from any sum due to the Contractor under this Contract and the balance, if any, shall be paid by the Contractor upon demand.

H. NOTICES

All written notices provided for in this Contract or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

*San Bernardino County
Arrowhead Regional Medical Center
400 North Pepper Avenue
Colton, CA 92324*

*Forward Advantage, Inc.
7255 N. First Street, Ste. 106
Fresno, CA 93720*

Notice shall be deemed communicated two (2) County working days from the time of mailing if mailed as provided in this paragraph.

I. ENTIRE AGREEMENT

This Contract, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the San Bernardino County and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

►

Dawn Rowe, Chair, Board of Supervisors

Dated: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
of San Bernardino County

By _____
Deputy

(Print or type name of corporation, company, contractor, etc.)

By ► _____
(Authorized signature - sign in blue ink)

Name _____
(Print or type name of person signing contract)

Title _____
(Print or Type)

Dated: _____

Address _____

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
► _____ County Counsel	► _____	► _____
Date _____	Date _____	Date _____



Contract Number

SAP Number

**ATTACHMENT A
HARDWARE PURCHASE TERMS**

These Hardware Purchase Terms are attached to, form a part of, and supplement the General Terms.

A. DEFINITIONS

Capitalized terms used herein have the same meaning as ascribed in the General Terms. In addition, the following capitalized terms shall have the meaning ascribed herein:

- A.1** "Counterfeit Items": include, but are not limited to, raw materials, parts, components or assemblies that are or contain an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified material, part, component or assembly from the OEM, or the authorized OEM reseller or distributor. Unlawful or unauthorized substitution includes used material represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics. If the item is an electronic part, the term also includes unlawful or unauthorized embedded software or firmware.
- A.2** "Documentation": users' guides, manuals and other printed materials necessary or useful to County for its use and maintenance of the Software or customarily provided with the Software. Manuals and other printed materials customized for County hereunder constitute Work Product if such materials are required by the Statement of Work.
- A.3** "OEM": an original equipment manufacturer.
- A.4** "Vendor": Contractor, as defined in the General Terms, and the individual or entity that is the direct seller of the Product to the County on behalf of Contractor.

B. PRICE

Prices for Products purchased hereunder shall be as specified in Exhibit B-1, Software Quantities and Prices.

C. DOCUMENTATION

Vendor agrees to provide Documentation and updated versions thereof to County at no charge for each Product purchased. Vendor agrees that County may reproduce a reasonable number of copies of Documentation for its own use in maintaining the Products, provided that County includes Vendor's or manufacturer's copyright notice on any such reproduced Documentation. If County requests that Vendor provide additional copies of Documentation, Vendor agrees to charge no greater prices than Vendor charges to its other customers for similar additional copies of Documentation.

D. ORDERS, DELIVERY, AND INSPECTION

D.1 Orders

County may elect to purchase Products under this Contract by issuing a P.O. If Vendor is unable to fulfill a P.O., in whole or in part, due to insufficient inventory, Vendor will notify County in writing within twenty-four (24) hours of P.O. receipt, and County may, at its sole discretion, cancel or modify the P.O. Unless Vendor gives County written notice, a P.O. is deemed accepted within two (2) business days of Vendor's receipt or upon shipment, whichever occurs first. County may, in its sole discretion, cancel, reschedule, or change the location of delivery on any P.O. without incurring any additional charges by providing written notice to Vendor at any time prior to shipment.

D.2 Shipping Terms

Unless otherwise stated in the P.O., all shipments are Free on Board destination with Vendor bearing all costs for freight, insurance, duties, taxes and other shipping expenses to the destination specified in the P.O. and shall bear all risk of loss until County receives the Product at the specified destination. Vendor

shall ship orders according to County's requested shipment dates or, if no shipment date is specified, within two (2) business days of receipt of County's P.O.

D.3 Delivery

Time is of the essence with respect to the delivery of Products. Vendor shall immediately notify County in writing of any anticipated delay in meeting the delivery schedule, stating the reasons for the delay. Products shipped after their scheduled shipment date will be shipped by Vendor on an expedited overnight basis with the surcharge for such expedited overnight delivery being at Vendor's sole expense. No shipment will be deemed complete until all Products specified on the P.O. have been delivered. In case of default by Vendor, County may procure the Product from other sources and may deduct from unpaid balances due to Vendor. The prices paid by County for such alternate product shall be considered the prevailing market prices paid at the time such purchase is made.

D.4 Order Inspection

County will notify Vendor in writing, which may be via electronic mail, of any shipment not conforming to the P.O., including delivery of the wrong product, overages, shortages or shipping damage within five (5) business days of delivery. Vendor will correct any identified nonconformities within five (5) business days of County's notice. The foregoing procedure may be repeated until County accepts the Product or cancels the order. If County determines, after a minimum of 3 evaluation cycles as provided herein, that the Product fails to meet the P.O., County may cancel the order without incurring any further liability hereunder and procure the Products elsewhere.

D.5 Right of Rejection

Receipt of an order does not constitute acceptance of all Product in that order. County shall have the right to inspect or test and reject any order, or any part thereof within thirty (30) calendar days after delivery. The quantities specified in this Contract or any P.O. are the only quantities required. If the Vendor delivers in excess of the quantities ordered, County shall not be required to make any payment for the excess Products, and may return them to Vendor at Vendor's expense or exercise any other rights available to County at law or in equity.

E. PRODUCT WARRANTIES

Vendor warrants that Products delivered under this Contract are new, only contain materials obtained directly from an OEM or a source having the express written authority of the OEM, including an authorized aftermarket manufacturer, and do not contain Counterfeit Items; substantially comply with the specifications and perform as described in the associated Documentation under normal use; are identical in all respects to samples provided as part of the bid process, if any; do not infringe or misappropriate any third party's patent, copyright, trademark, trade secret, or any other intellectual property right; and conform to all domestic legal requirements and shall not be in violation or cause County to be in violation of any applicable law, rule or regulation (including without limitation, export, environmental and hazardous substance laws, regulations, rules and directives). Vendor shall meet proper labeling requirements for Products, including without limitation, Consumer Product Safety Improvement Act, Federal Communications Commission, California Electronic Waste Recycling Act, California Restrictions on the use of Certain Hazardous Substances in Electronic Devices, and Proposition 65 certifications and warnings.

F. DISCLAIMER OF WARRANTIES

THE FOREGOING EXPRESS WRITTEN WARRANTIES BETWEEN THE PARTIES ARE EXCLUSIVE AND ARE IN LIEU OF ANY OTHER WARRANTIES OR REMEDIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO THE EXTENT THAT IT IS ILLEGAL OR UNENFORCEABLE UNDER APPLICABLE LAW.

G. INDEMNIFICATION

These indemnification obligations and responsibilities are in addition to the General Indemnification of General Terms Section E.1.

G.1 Obligations

Vendor shall defend, indemnify and hold harmless County, its officers, employees, agents and volunteers from and against all third party claims, costs (including, without limitation, attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret ("Intellectual Property Rights") by any Product.

G.2 Defense and Settlement

County will give Vendor sole control of the defense (with counsel reasonably acceptable to County) and settlement of such claim; provided that Vendor may not settle the claim or suit absent the written consent of County unless such settlement: (a) includes a release of all claims pending against County, (b) contains no admission of liability or wrongdoing by County, and (c) imposes no obligations upon County other than an obligation to stop using the Products that are the subject of the claim. In the event that Vendor fails to or elects not to defend County against any claim for which County is entitled to indemnity by Vendor, then Vendor shall reimburse County for all reasonable attorneys' fees and expenses within thirty (30) days from date of invoice or debit memo from County. After thirty (30) days, County will be entitled to deduct any unpaid invoice or debit memo amount from any amounts owed by County to Vendor. This shall not apply to any judgment or settlement amount, which amounts County shall be entitled to notify, invoice or debit Vendor's account at any time; and County, at its sole discretion, may settle the claim or suit. County may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability): (a) when substantial principles of government or public law are involved; (b) when litigation might create precedent affecting future County operations or liability; or (c) when involvement of County is otherwise mandated by law.

G.3 Non-Infringing Alternatives

If, in Vendor's opinion, any Products become, or are likely to become, the subject of a claim of infringement of Intellectual Property Rights, Vendor may, at its option: (i) procure for County the right to continue using the Products; (ii) replace or modify the Products to be non-infringing, without incurring a material diminution in performance or function; or (iii) if neither of the foregoing is, in the reasonable judgment of Vendor, County shall cease use of the Products upon written notice from Vendor, and Vendor shall provide County with a pro-rata refund price paid by County to Vendor in connection with any such Products calculated over a 3-year baseline depreciation.

G.4 Notice of Claim

If a credible claim is made or threatened, including without limitation the filing of a lawsuit against County, or County receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, County will use reasonable efforts to notify Vendor promptly of such lawsuit, claim or election. However, County's failure to provide or delay in providing such notice will relieve Vendor of its obligations only if and to the extent such delay or failure materially prejudices Vendor's ability to defend such lawsuit or claim.

[END OF HARDWARE PURCHASE TERMS]

EXHIBIT A-1
PRICE LIST
RESERVED

ATTACHMENT B
RESERVED

**EXHIBIT B-1
SOFTWARE QUANTITIES AND PRICES**

		Proposal: FAI-ARMC-20220707-200USRPAM	
		Proposal Date: July 7, 2022	
		Provided For: Arrowhead Regional Medical Center Attn: Jose Mendez	
		Colton, California 92324	
Forward Advantage, Inc. 7255 N. First Street, Suite 106 Fresno, CA 93720 Phone: 877.636.7927 Fax: 559.436.4217		Representative: Todd Ledyard, Director of Sales 877.636.7927 todd.ledyard@forwardadvantage.com	
QTY	Description		
200	SUB-PAM-P	PAM License Fees License: Imprivata (36 Month)	\$ 541.12 \$ 108,224.00
		Total License Fees	\$ 108,224.00
1	PS-	PAM Services Package	\$ 10,000.00 \$ 10,000.00
		Total Service Fees	\$ 10,000.00
## Travel and Expenses are not included		SUBTOTAL QUOTE	\$ 118,224.00
Comments (1) PAM Administrator Training and assistance with workflow configurations.		Sales Tax	N/A
		Shipping	N/A
		TOTAL QUOTE	\$ 118,224.00
		Order Acceptance: By signing below customer accepts the terms of this proposal as an irrevocable purchase order.	
		Signature:	
Standard Terms: Your use of the Imprivata Software, Hardware and/or Services set forth on this Quote is governed by the applicable terms set forth at imprivata.com/legal which are accepted by you by your issuance of a purchase order and/or your installation of the Imprivata Software or Hardware. Provided, however, if the parties have mutually executed a written agreement for the purchase of such Software, Hardware and/or Services, in which case, the written agreement shall govern. Software will be invoiced upon shipment. Services will be invoiced upon receipt of customer purchase order. Annual Payments: Customer will provide a multi-year non-cancellable purchase order upfront. Forward Advantage will invoice the subscription		Name:	
		Title:	
		Date:	

EXHIBIT B-2
RESERVED

EXHIBIT B-3
STATEMENT OF WORK
RESERVED

ATTACHMENT C
SOFTWARE SUPPORT AND MAINTENANCE TERMS

These Software Support and Maintenance Terms are attached to, form a part of, and supplement the General Terms only with respect to Software Support and Maintenance services.

A. DEFINITIONS

Capitalized terms used herein have the same meaning as ascribed in the General Terms. In addition, the following capitalized terms shall have the meaning ascribed herein:

- A.1** “Documentation”: Users’ guides, manuals and other printed materials necessary or useful to County for its use and maintenance of the Software or customarily provided with the Software. Manuals and other printed materials customized for County hereunder constitute Work Product if such materials are required by an SOW.
- A.2** “SLA”: Service Level Agreement which is attached hereto as Exhibit C-1 and hereby incorporated herein.
- A.3** “Service Provider”: Contractor, as defined in the General Terms or the individual or entity that is the owner of the rights to the Software.

B. SUPPORT SERVICES

B.1 Installation

Services are included in the proposal and additional hours will require a new SOW and proposal.

B.2 Training

Service Provider will provide remote training for up to two (2) County employees designed to allow such employees to operate, administer and maintain the Software. County employees trained remotely will possess a sufficient level of competence and skill to allow the employee to effectively participate in such training.

B.3 Telephone or Chat

Service Provider will provide 24/7 telephone for Software as reasonably required to assist County IT personnel to troubleshoot and correct Software performance to materially conform with Documentation. Service Provider may use personnel, resources, and third party contractors in locations worldwide to provide this level of support.

B.4 Updates

Service Provider will provide updates to Software, such as bug fixes and security patches that are generally made to its government and/or commercial licensees at no additional cost to County. Updates do not include any options, upgrades or future products which Service Provider charges for as a separate product or where Service Provider gives County a written end-of-life notice.

B.4.1 Service Provider is not obligated to ensure that new software versions of its products are backwards compatible with older hardware platforms or software versions.

B.4.2 County may elect to defer or decline installation of updates or to install updates in a test environment before applying them in its production systems. Service Provider shall not install or attempt to install any update on any County system without County’s prior written consent.

B.5 Remote Access by Service Provider

If remote access is needed to assist Customer with troubleshooting and correction, Service Provider will have view-only capability and will request customer to provide control of the remote access session with customer engaged in the session. In such case, Service Provider will guide the County personnel through the support process. Service Provider may not use personnel, resources, or third party contractors located outside of the continental United States to provide this level of support unless approved by County in writing prior to contact.

B.6 Limitations

Service Provider will not be obligated to provide support under the following conditions:

- B.6.1** Software has been modified or altered other than by Service Provider or in accordance with Service Provider's instructions;
- B.6.2** Software has not been installed, operated, repaired, or maintained in accordance with Documentation; or
- B.6.3** Trouble is related to configuration of County's network.

C. MAINTENANCE SUPPORT

C.1 Service Levels

County may order maintenance support at an additional cost as set forth in the SLA under Service Provider's standard software support terms available at the time that services are ordered. Notwithstanding the foregoing, maintenance support will, at a minimum, include:

- C.1.1** Defect correction information or bypass;
- C.1.2** Periodic releases of code corrections, bug fixes, functional enhancements and new versions and releases of Software and Documentation; and
- C.1.3** Reasonable remote assistance to correct Software defects.

C.2 Upgrades

If Service Provider upgrades Software, provided that County has an active SLA, County may upgrade all licensed instances of the Software at a rate no higher than the current retail pricing.

D. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW NEITHER PARTY SHALL BE LIABLE FOR INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA OR PRIVACY, LOSS OF INCOME, LOSS OF OPPORTUNITY OR PROFITS, OR COSTS OF RECOVERY, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, REGARDLESS OF WHETHER A PARTY WAS APPRISED OF THE POTENTIAL FOR SUCH DAMAGES. EXCEPT FOR CLAIMS ARISING PURSUANT TO INDEMNIFICATION OBLIGATIONS OR A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT WILL A PARTY'S LIABILITY FOR DIRECT DAMAGES, EXCEED THE GREATER OF \$5,000,000 OR THE AMOUNT PAID BY COUNTY UNDER THE CONTRACT.

[END OF SOFTWARE SUPPORT AND MAINTENANCE TERMS]

EXHIBIT C-1
SERVICE LEVEL AGREEMENT
RESERVED

ATTACHMENT D
CLOUD SERVICES TERMS AND CONDITIONS

These Cloud Services Terms and Conditions are attached to, form a part of, and supplement the General Terms only with respect to cloud services.

A. DEFINITIONS

Capitalized terms used herein have the same meaning as ascribed in the General Terms. In addition, the following capitalized terms shall have the meaning ascribed herein:

- A.1** “CISO”: County Chief Information Security Officer or other County-designated officer responsible for cyber-infrastructure security.
- A.2** “Cloud Service”: Generally, SaaS, PaaS, and/or IaaS depending on what Service Provider is offering under this Contract.
- A.3** “CSP”: Cloud Service Provider is the contracted derivative or direct provider of Cloud Services.
- A.4** “CONUS”: Continental United States
- A.5** “County Data”: Any information, formulae, algorithms, or other content that County, County’s employees, agents and end users upload, create or modify using the SaaS pursuant to this Contract. County Data also includes user identification information, personally identifiable information, and metadata which may contain County Data or from which County Data may be ascertainable.
- A.6** “Data Breach”: Any access, destruction, loss, theft, use, modification or disclosure of County Data by an unauthorized party or that is in violation of Contract terms and/or applicable state or federal law.
- A.7** “IaaS” (Infrastructure as a Service): Service Provider provides the underlying cloud infrastructure for processing, storage, networks, and other fundamental computing resources that the customer does not manage or control, but the customer has control over operating systems; storage, deployed applications, and possibly limited control of select networking components (e.g., host firewalls).
- A.8** “PaaS” (Platform as a Service): Applications running on a cloud infrastructure managed or controlled by the Service Provider that are client-created or acquired using programming languages and tools supported by the Service Provider, but deployed onto the cloud infrastructure and controlled by client.
- A.9** “Recovery Point Objective (RPO)”: The point in time at which County Data can be recovered and/or systems restored when service is restored after an interruption. The Recovery Point Objective is expressed as a length of time between the interruption and the most proximate backup of County Data immediately preceding the interruption. The RPO is detailed in the SLA.
- A.10** “Recovery Time Objective (RTO)”: The period of time within which information technology services, systems, applications and functions must be recovered following an unplanned interruption. The RTO is detailed in the SLA.
- A.11** “SaaS” (Software as a Service): Applications running on a cloud infrastructure managed or controlled by the Service Provider including network, servers, operating systems, or storage, that are accessed by client devices through a thin client interface such as a web browser.
- A.12** “SLA”: Service Level Agreement which is attached hereto as Exhibit D-1 and hereby incorporated herein.
- A.13** “Service Provider”: Contractor, as defined in the General Terms or the individual or entity that is the owner

of the rights to the Software.

B. CLOUD SERVICE AVAILABILITY

The Cloud Service shall be available twenty-four (24) hours per day, 365/366 days per year. If Cloud Service monthly availability averages less than 99.99% (excluding agreed-upon maintenance downtime), County shall be entitled to recover damages, apply credits or use other contractual remedies as set forth in the SLA. If Cloud Service monthly availability averages less than 99.99% (excluding agreed-upon maintenance downtime), for three (3) or more months in a rolling twelve-month period, County may terminate the contract for material breach. Service Provider shall provide advance written notice to County of any major upgrades or changes that will affect the Cloud Service availability.

C. DATA AVAILABILITY

County Data shall be available twenty-four (24) hours per day, 365/366 days per year. If County Data monthly availability averages less than 99.99% (excluding agreed-upon maintenance downtime), County shall be entitled to recover damages, apply credits or use other contractual remedies as set forth in the SLA if County is unable to access County Data as a result of: (i) acts or omission of Service Provider; (ii) acts or omissions of third parties working on behalf of Service Provider; (iii) network compromise, network intrusion, hacks, introduction of viruses, disabling devices, malware and other forms of attack that can disrupt access to Service Provider's server, to the extent such attack would have been prevented by Service Provider taking reasonable industry standard precautions; (iv) power outages or other telecommunications or Internet failures, to the extent such outages were within Service Provider's direct or express control. If County Data monthly availability averages less than 99.99% (excluding agreed-upon maintenance downtime), for three (3) or more months in a rolling twelve-month period, County may terminate the contract for material breach in accordance with the Termination for Default provision in the General Provisions – Information Technology.

D. SaaS and SECURITY

D.1 Certification

Service Provider shall certify:

- D.1.1** the sufficiency of its security standards, tools, technologies and procedures in providing SaaS under this Contract, and, if requested by County, provide a copy of its Statement on Standards for Attestation Engagements (SSAE) 18 Service Organization Control (SOC) 2 Type II audit results;
- D.1.2** its compliance with the California Information Practices Act (Civil Code Sections 1798 et seq.);
- D.1.3** its compliance with privacy provisions of the Federal Privacy Act of 1974; and
- D.1.4** its compliance with applicable industry standards and guidelines, including but not limited to relevant security provisions of the Payment Card Industry (PCI) Data Security Standard (PCIDSS) including the PCI/DSS Cloud Computing Guidelines.

D.2 Safeguards

Service Provider shall implement and maintain all appropriate administrative, physical, technical and procedural safeguards in accordance with section D.1.a above at all times during the term of this Contract to secure County Data from Data Breach, protect County Data and the SaaS from hacks, introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt and/or compromise County's access to County Data.

D.3 High-Availability and Redundancy

Service Provider shall have a high-availability and a redundant environment, where the minimum requirements are:

- D.3.1** Power and/or generators shall be 2N
- D.3.2** UPS power shall be 2N
- D.3.3** Redundant servers shall be N+1
- D.3.4** Data center shall be Tier-2

- D.3.5** Data center cooling shall be 2N
- D.3.6** All UPS's and Generators must be tested and inspected on a quarterly basis. Copies of inspection and testing results must be provided upon demand to the County. Inspection and testing records must be retained for a minimum of 3 years
- D.3.7** Data center cooling must have preventative maintenance performed quarterly. Copies of preventative maintenance records must be provided upon demand to the County. Preventative maintenance records must be retained for a minimum of 3 years.

D.4 Physical

Service Provider shall have a reasonable physical security environment, where the minimum requirements are:

- D.4.1** Physical access to facility, data center(s), and/or server room(s) is restricted using an access control system that utilizes iCLASS SE or multiclass SE readers.
- D.4.2** Access control system must be capable of restricting access by time of day and groups
- D.4.3** Access control system must be auditable providing customize reports on demand for inspection by the County
- D.4.4** Access control system components and batteries must be inspected annually.
- D.4.5** Access control system batteries must be replaced every 3 years or when they fail
- D.4.6** Vendor must be able retain access control history for a minimum of 3 years or as required by law
- D.4.7** Alerts are generated when physical security has been breached by the access control system or intrusion detection system
- D.4.8** Intrusion detection systems must be monitored by a third party UL central station
- D.4.9** Intrusion detection systems must be inspected and tested quarterly with signals sent to the central station. Testing reports must be retained for 3 years and provided on demand by the County.
- D.4.10** Intrusion detection batteries must be inspected annually and replaced every 3 years or when they fail.
- D.4.11** Facility, data center(s), and server room(s) have an appropriate Video Surveillance System in-place for surveillance.
- D.4.12** Video surveillance system must have the capability to interface with the access control system and intrusion detection system
- D.4.13** Video surveillance system must be inspected quarterly to make sure cameras are recording and video is being archived
- D.4.14** Video surveillance system must archive video as per California Government Sections § 26202.6, § 34090.6 and § 53160
- D.4.15** All access control systems, intrusion detection systems and video surveillance systems must be on the facilities emergency power system and protected by UPS.
- D.4.16** Data center have protections in-place that minimize environmental issues such as temperature, fire, smoke, water, dust, electrical supply interference, and electromagnetic radiation.
- D.4.17** A chemical fire suppression system installed in the data center as per NFPA 2001.
- D.4.18** The chemical fire suppression system must be inspected semiannually as per NFPA 2001 §8.3
- D.4.19** Smoke detectors under the raised floors.
- D.4.20** Water detection system under the raised floors and above the ceiling.
- D.4.21** Facility must be protected 100% by an automatic fire sprinkler system with the data center being protected with an automatic pre-action fire sprinkler system.

D.4.22 Facility automatic fire alarm system must be tested and inspected as per NFPA 25

D.5 Verification

Service Provider shall provide a Statement on Standards for Attestation Engagements 16 (SSAE16) Service Organization Controls Report (SOC) 1 and SOC 2 Type I and Type II Reports on an annual basis. Based on the report(s), its findings and remediation planned or accomplished shall be provided to the County CISO in terms of an attestation letter. Service Provider shall also provide statistics specific to SaaS environment on a mutually agreed upon frequency with County that includes without limitation to performance, information security, network, and other pertinent SaaS data related to the Contract, at no cost to County.

D.6 Security

Service Provider assumes responsibility for the security and confidentiality, integrity, and availability of County Data under its control. No County Data shall be copied, modified, destroyed or deleted by Service Provider other than for normal operation or maintenance of SaaS during the Contract period without prior written notice to and written approval by CISO. When data is destroyed or disposed, it shall be in accordance with the National Institute of Standards of Technology (NIST) Special Publication 800-88 published by the U.S. Department of Commerce. The incorporation of the Defense of Department (DoD) standard 5220.2-M wipe method shall be used when using data destruction programs, file shredders, etc. In either case, a written confirmation of this process is required to the County CISO within three (3) days of the destroyed/disposed data. Remote access to County Data from outside the CONUS, including remote access to County Data by authorized SaaS support staff in identified support centers, is prohibited unless approved in advance by the CISO.

E. ENCRYPTION

In order to provide reasonable security to County Data, cloud service datacenters should encrypt all County Data while in route to and from the Service Provider (in motion) using secure transfer methods (e.g., Secure Sockets Layer, Transport Layer Security), and while stored in the datacenter (at rest)

E.1 Data In Motion

All transmitted County Data require encryption in accordance with:

- E.1.1** NIST Special Publication 800-52 Guidelines for the Selection and Use of Transport Layer Security Implementations; and
- E.1.2** NIST Special Publication 800-57 Recommendation for Key Management - Part 3: Application-Specific
- E.1.3** Key Management Guidance; and
- E.1.4** Secure Sockets Layer (SSL) is minimally required with minimum cipher strength of 128-bit.

E.2 Data At Rest

All County Data at rest require encryption in accordance with:

- E.2.1** Federal Information Processing Standard Publication (FIPS) 140-2; and
- E.2.2** National Institute of Standards and Technology (NIST) Special Publication 800-57 Recommendation for Key Management - Part 1: General (Revision 3); and
- E.2.3** NIST Special Publication 800-57 Recommendation for Key Management - Part 2: Best Practices for
- E.2.4** Key Management Organization; and
- E.2.5** NIST Special Publication 800-111 Guide to Storage Encryption Technologies for End User Devices.
- E.2.6** Advanced Encryption Standard (AES) with cipher strength of 256-bit is minimally required.

F. DATA LOCATION

Unless otherwise stated in the Statement of Work and approved in advance by the CISO, the physical location of Service Provider's data center where County Data is stored shall be within the CONUS, and County Data shall not be transmitted, processed or stored outside of CONUS

G. RIGHTS TO DATA

The parties agree that as between them, all rights, including all intellectual property rights, in and to County Data shall remain the exclusive property of County, and Service Provider has a limited, non-exclusive license to access and use County Data as provided to Service Provider solely for performing its obligations under the Contract. Nothing herein shall be construed to confer any license or right to County Data, including user tracking and exception County Data within the system, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of County Data by Service Provider or third parties is prohibited. For the purposes of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security or service delivery analysis that is not explicitly authorized

H. TRANSITION PERIOD

For ninety (90) days prior to the expiration date of this Contract, or upon notice of termination of this Contract, Service Provider shall assist County in extracting and/or transitioning all County Data in the format determined by the County ("Transition Period"). The Transition Period may be modified in the SOW or as agreed upon in writing by the parties in a contract amendment. During the Transition Period, SaaS and County Data access shall continue to be made available to County without alteration. Service Provider agrees to compensate County for damages or losses County incurs as a result of Service Provider's failure to comply with this section. Unless otherwise stated in the SOW, the Service Provider shall permanently destroy or render inaccessible any portion of County Data in Service Provider's and/or subcontractor's possession or control following the expiration of all obligations in this section. Within thirty (30) days, Service Provider shall issue a written statement to County confirming the destruction or inaccessibility of County Data. County at its option, may purchase additional transition services as agreed upon in the SOW

I. DATA BREACH

I.1 Notification

Upon discovery or reasonable belief of any Data Breach, Service Provider shall notify the CISO by the fastest means available and in writing to the County Notices contact within twenty-four (24) hours after Service Provider reasonably believes a Data Breach has occurred. At a minimum, the notification shall include:

- I.1.1** the nature of the Data Breach;
- I.1.2** County Data accessed, used or disclosed;
- I.1.3** any evidence of County Data extricated;
- I.1.4** the identity of the person(s) who accessed, used, disclosed and/or received County Data (if known);
- I.1.5** the law enforcement agency(ies) contacted; and
- I.1.6** actions taken or will be taken to quarantine and mitigate the Data Breach; and
- I.1.7** corrective action taken or will be taken to prevent future Data Breaches.

I.2 Investigation

Service Provider shall conduct an investigation of the Data Breach and shall share the report of the investigation with the CISO. If required by law, County and/or its authorized agents shall have the right to lead or participate in the investigation, in its sole discretion. Service Provider shall cooperate fully with County, its agents and law enforcement.

I.3 Post-Breach Audit

Upon advance written request, Service Provider agrees that the County or its designated representative shall have access to Service Provider's SaaS, operational documentation, records and databases, including online inspection, that relate to the SaaS that experienced the Data Breach. The online inspection shall allow the County, its authorized agents, or a mutually acceptable third-party to test that controls are in-place and working as intended. Tests may include, but not be limited to, the following:

- I.3.1** Operating system/network vulnerability scans,
- I.3.2** Web application vulnerability scans,
- I.3.3** Database application vulnerability scans, and
- I.3.4** Any other scans to be performed by the County or representatives on behalf of the County.

J. DISASTER RECOVERY AND BUSINESS CONTINUITY

J.1 Notification

In the event of disaster or catastrophic failure that results in significant loss of County Data or access to County Data, Service Provider shall notify County by the fastest means available and in writing, with additional notification provided to the CISO. Service Provider shall provide such notification within twenty-four (24) hours after Service Provider reasonably believes there has been such a disaster or catastrophic failure. In the notification, Contactor shall inform County of:

- J.1.1** the scale and quantity of County Data loss;
- J.1.2** Service Provider's action plan to recover County Data and mitigate the results of County Data loss; and
- J.1.3** Service Provider's corrective action plan to prevent future County Data loss.

J.2 Restore and Repair Service

Service Provider shall:

- J.2.1** restore continuity of SaaS,
- J.2.2** restore County Data in accordance with the RPO and RTO as set forth in the SLA,
- J.2.3** restore accessibility of County Data, and
- J.2.4** repair SaaS as needed to meet the performance requirements stated in the SLA.

J.3 Investigation and Audit

Service Provider shall conduct an investigation of the disaster or catastrophic failure and shall share the report of the investigation with County. At its sole expense, Service Provider will have an independent, industry-recognized, County-approved third party perform an information security audit. Within five (5) business days of Service Provider's receipt of the final report, Service Provider will provide the County with a copy of the report and a written remediation plan.

[END OF CLOUD SERVICES TERMS]

EXHIBIT D-1
SERVICE LEVEL AGREEMENT

RESERVED

[END OF CLOUD SERVICES TERMS]

EXHIBIT D-1
SERVICE LEVEL AGREEMENT

RESERVED