

AGREEMENT

Between EnvisionWare, Inc. ("EnvisionWare", "we", "us" or "our")

and

City of Salinas, California ("Customer", "you" or "your")

We agree to sell to you certain equipment, software, and service according to the terms of this agreement, which includes the attached Standard Terms and Conditions, Quotation (and attachments thereto), Statements of Work (if any) and all Exhibits associated with all of the foregoing (all of which are made a part of and referred to as the "**Agreement**").

You and we each acknowledge that we both agree to be bound by the terms of this Agreement and have had a duly authorized representative execute this Agreement below under seal.

EnvisionWare, Inc.

Customer:

By: _____ (seal)
Michael J Monk, CEO

By: _____ (seal)

Print name: Ray Corpuz

Title: City Manager

Principal business address:

Principal business address:

2855 Premiere Parkway
Suite A
Duluth, GA 30097
Attn: Michael J. Monk, CEO
Telephone: 678-382-6590
Fax: 678-382-6501
Email: mmonk@envisionware.com

200 Lincoln Ave.
Salinas, CA 93901
Attn: Ray Corpuz, City Manager
Telephone: 831-758-7381
Fax:
Email: ray.corpuz@ci.salinas.ca.us

Effective Date: _____ Approved as to Form:

Agreement No.: _____

City Attorney

STANDARD TERMS AND CONDITIONS

1. **“Software”** means the object code versions of any software programs stated in a Specification and any updates to the software programs that we may provide to you pursuant to this Agreement. **“Hardware”** means the equipment stated in a Specification. We will deliver, install, and test the Software and Hardware product(s) (the **“Product”**) we have agreed to sell to you as specified in the specification (the **“Specification”**) contained in the Quotation or RFP response (both referred to as **“Quotation”**) attached hereto as Exhibit A, when it is finally agreed to and approved in writing by you and us. We will also provide support and training services as specified in the Specification. This Agreement shall govern all future Quotations that you and we agree to in writing from time to time hereafter and which reference this Agreement (such future Quotations being incorporated herein).
2. Subject to the terms of this Agreement we hereby grant to you a non-exclusive license, without the right to sublicense, to the Software specified in the Specification to (i) install, use and display the Software on the designated systems; and (ii) use the documentation solely in connection with the authorized use of the Software. All Software is licensed and not sold. We retain all rights not specifically granted in this Agreement. The terms of use of the Software are contained in the Software End User License Agreement and Warranty (**“EULA”**) attached hereto as Exhibit B.
3. You agree to respect our intellectual property, that you will not use our trademarks or logos without our permission, and that you limit access to provided technical documentation to your library staff. We own or have a license to use the Software. Under no circumstances may you transfer our manuals, documentation, software, or license to another entity without our prior written approval. Any transfer in violation of this provision shall be of no power or effect. You agree to not provide any of our Products, Software, documentation, confidential information or licenses to a competitor of ours. You may not publish technical information about our Products in a forum that is publicly accessible. Your use of the Product on a protected Intranet is acceptable provided that only your staff has access to the system.
4. We reserve the right to list you as our customer on our customer list. You have final review and approval over any proposed press release or announcement about the installation of our products at your Library.
5. A copy of our insurance certificate is attached as Exhibit C.
6. Price Quotations
 - A. The estimated price for crating, freight and delivery to destinations is listed separately on the Quotations in Exhibit A. Freight charges may vary based on actual shipping addresses per item. Prices quoted are fixed for twelve (12) months from the Effective Date of this Agreement.
 - B. When we introduce new Products, the discounted prices will be added to the PICS Estimate (as published in the EnvisionWare Customer Center for your library) at discounted prices.

- C. After twelve (12) months, quoted prices may increase by not more than the U.S. Department of Labor, Consumer Price Index, All Items, Unadjusted, Urban Areas (“**CPI-U**”) for the twelve (12) month period ending in January of each year of the contract, except for those RFID-related components affected by the Euro/Dollar exchange rate. You will be notified about price increases that may affect future add-on purchases at least sixty (60) days prior to an effective change.
- 7. You agree that other public institutions may acquire products directly from EnvisionWare using the prices published in the PICS and updated PICS described in Section 6 above.
 - 8. Our payment terms are as follows:
 - A. For all purchases except maintenance and subscription or recurring monthly, quarterly or annual services we will invoice for Hardware and Software as outlined on your “**Sales Order Confirmation**”. Payment terms are set forth in each Quotation.
 - i) Custom or built-to-order Products include, but are not limited to, sorters, 24-Hour Library, kiosks and other products which may be noted in the item description in the Quotation as being custom-built or made to order.
 - ii) All Quotations that include custom or built-to-order Products require an advance deposit, which must be received by EnvisionWare before orders can be placed with our factories. The deposit is non-refundable unless we fail to comply with the applicable Acceptance Criteria in the Statement of Work.
 - iii) Acceptance Criteria are developed in advance of delivery. Acceptance tests are conducted upon installation of each component for which Acceptance Criteria have been defined.
 - iv) When all tests pass for items on a Sales Order Confirmation the Customer must confirm an Order Acceptance.
 - B. Maintenance: Full payment prior to expiration of your first year warranty or prior to the expiration of the current maintenance period.
 - C. Subscription and Rental Services: Full payment prior to expiration of your current, fully paid month, quarter or year as defined in your subscription or rental agreement.
 - 9. We are not responsible for delays caused by non-working library equipment, viruses or worms on your systems, or any other delays caused by you, your staff or your consultants. If you cause delays that result in added expense to us, we will issue a change order to recover for those losses and you agree to pay for such losses. We will be responsible for delays caused by us. We will notify you promptly and in writing if there is a delay, which will add expense.
 - 10. You agree to provide adequate space, network connections, and power as outlined in the Specification for each device. For building modifications, we agree to provide technical documentation that clearly defines the requirements for the modifications. We are

responsible for the accuracy of the documentation we provide. If an error in our documentation results in construction error, we will be responsible for such error, but we retain the right to obtain competitive bids to mitigate the costs of remedy. You are responsible for ensuring the modifications are completed prior to our scheduled installation time. If modifications are not completed or are incorrect, you will be responsible for correcting the errors and for payment of the costs associated with the lost time and travel of our staff.

11. We will install the Product on your computers (per the Specification) or those provided by us provided you make a library technical staff person available to provide administrative access and aid us in resolution of any issues relating to network connection, permissions, or other things over which we have no control.
12. Notwithstanding the Warranty Period start date stated in the EULA, for the specific Products set forth in the applicable Quotation the applicable Product Warranty Period will commence upon your acceptance of the items specified in the applicable Sales Order Confirmation that EnvisionWare will email to you confirming your order. We will maintain the Product during the applicable Warranty Period. You will be responsible for basic troubleshooting and providing assistance to our support staff that will assist via email, telephone, remote access, chat or other tools that provide access and communication with you and your system. If an on-site visit is required because of a hardware failure that is not easily remedied by a simple swap of a module, we will come on site at no additional expense to you. The performance terms of the Product Warranty set forth in the EULA are superseded if the Platinum or PlatinumPLUS Maintenance Program apply to you. Support is provided for the particular Products or Services according to the applicable Maintenance Program as set forth in the Quotation.
13. You agree to provide remote access via the Central Management system we install as part of this Product. If you do not agree, we will increase your annual maintenance agreement cost by 10%.
14. During the Warranty Period, we will respond your questions and aid you in the support of your Product as stated in the applicable Maintenance Program. If you need additional installation services for expansion of your system or reinstallation of systems because of your hardware failures or related issues, our Professional Services Implementation Consultants will be available to help you for a fixed rate via telephone or on-site as defined in the price schedule set out in the quotation or RFP response.
15. We support only the then-current release of the given Software and the most recent previous release. We will provide notice of available Software updates, which you may download at your convenience and install on your systems according to your timetable for as long as you are covered under the Product Warranty or Maintenance Program. In order to know about these updates, you must subscribe to our customer forum or Twitter feed.
16. When you update the software, we will answer your questions for these processes and help you to understand how to perform your upgrades. If you wish to have us perform your

upgrades, we will provide options for acquiring those services from our Professional Services group.

17. We will use skilled professionals in our training that will help to use your system effectively, plan a seamless implementation experience and obtain maximum value for your investment. We will minimize disruption to your current services and we will work in a professional manner that assures continued good public service and convenience for your staff. Upon successful completion of implementation and your total satisfaction, we will ask that you serve as a reference for us to other libraries that are considering similar purchases.
18. You agree to pay us according to the payment terms in the Quotation. If you do not provide timely payment, we will discontinue providing our services and support to you. In the event that you are ever dissatisfied, we ask that you contact us and provide an opportunity to remedy any problems. You may escalate your service request at any time by sending an email to customersatisfaction@envisionware.com.
19. You may purchase additional maintenance agreements for future years at a discount if you pay for additional maintenance with your original order. The discounted prices are defined in Exhibit A used to make this purchase. If you do not pay in advance for maintenance, near the end of the warranty period or each successive maintenance renewal period, you will receive an invoice for the annual maintenance agreement. We will provide a separate value for Software and Hardware for Time and Materials and the Gold Support Level so that you can decide to cover your entire system or only Software. If you elect hardware coverage, all items must be covered. Platinum and PlatinumPLUS customers agree to maintenance for all products in use. For all Support Levels, if you retire an item and take it out of service you may contact Maintenance Services to have the item removed from your Maintenance Record. You will not have hardware protection without an agreement, which also means that you will not have access to firmware updates. If you choose not to purchase hardware coverage, the alternative is a time and materials charge plus expenses. When you are covered by hardware maintenance, you have the assurance of prompt remedy, which cannot be provided under the same Service Level Guarantee under a time and materials program. If you fail to pay your maintenance invoice on time, you will receive a 30-day grace period after which your support services and access to downloads will be suspended until payment is received. Maintenance agreements are available under one of four “**Maintenance Programs**” described below. The program you have elected is stated in the applicable Quotation.
 - A. “**Standard Support Hours**” are 8:30 a.m. to 7:00 p.m. Eastern US Time, Monday through Friday, excluding U.S. federal holidays. Our goal for customers under a maintenance agreement is to answer 90% of all incoming support calls with a live technician. Platinum and PlatinumPLUS customers have 24x7x365 access to Support.
 - B. Maintenance Programs
 - i) **Time and Materials:** If you are not covered by a maintenance agreement as described below in Section B, ii through iv, when service of any kind is required you may contact support during Standard Support Hours. A support technician will forward terms for time and materials for your acceptance per Support Case. Upon

authorized email acceptance of the terms the technician will provide the requested Services at our then-current hourly rates for customers that are not under a maintenance agreement. There is a minimum charge of one hour per incident. All hardware, labor and travel expenses will be invoiced.

Time and Material support is available by calling the support number during Standard Support Hours. Customers under Time and Materials may access the User to User Forum provided that signup occurs via the Customer Center prior to expiration of the warranty period and prior to transitioning to Time and Materials status. Time and Materials customers do not have access to LiveChat, the Knowledge Base, software downloads or documentation after the expiration of a warranty. Customers must download the electronic documentation for their installed versions of licensed Products before transitioning to Time and Materials.

Our objective is to have all Time and Materials calls answered within four (4) business hours Monday through Friday from 8:30am Eastern time until 7:00pm Eastern time excluding holidays. There is no response after hours. When determining that a site visit is required, the support technician will provide you with an estimate for time, estimated materials and expenses, using EnvisionWare's flat expense rates of \$975 the first day of each 5-day period and \$250 for each additional day after the first per week. Upon receipt of approval from you, our goal is to dispatch a technician the same day for a determination made by noon Eastern time or the next business day for approvals received after noon Eastern time. The maximum interval for onsite arrival is two (2) business days after determining that an onsite visit is required and approval is received. You will be invoiced for the total number of hours for remote and onsite work plus the total number of onsite travel expenses.

Software patches and new versions of licensed software are not provided in Time and Materials support. If a Software or firmware update is required, you may have the option to catch up on lapsed maintenance (see Section 20) or you may pay for a new license, if available, based upon whichever is lower in cost. There is no separately available software license for embedded systems such as sorters (AMH) and 24-Hour Libraries and turnkey hardware/software systems in which the software is part of the item bundle. Hardware Revisions, which are included in maintenance for sorters (AMH) and 24-Hour Libraries, may not be available for purchase under Time and Materials.

The EnvisionWare (10) year life guarantee program is not available for Time and Materials. After (5) years, "ten (10) year systems" will become part of an End of Life program in which maintenance automatically escalates in year 5 and continues to rise each year thereafter according to the limits set forth in Section 3. An End of Life notice may identify certain parts or modules which may no longer be available. If the at-risk items fail, we will attempt to extend the life of your system by providing a quotation for a replacement module or alternative sub-system. If options to extend the life are not available, we will provide a reduced price upgrade quotation to replace your system if an upgrade is available.

- ii) **Gold Level Support:** Services are available via the EnvisionWare Customer Center portal and via toll-free telephone in North America during Standard Support Hours. Gold Level support is the standard program included with all sales other than for circulation and security products (Self Checkout, RFID, Sorters (AMH) and 24-Hour Libraries), which are covered by the Platinum Level program.

These services include the Knowledge Base, Customer Forum access, Support Case management, Enhancement and Defect tracking, software downloads, and documentation. LiveChat is available via the Customer Center during Standard Support Hours. There is no after-hours support available in the Gold Level maintenance program.

Our goal is to answer all calls within 4 hours during Standard Support Hours. On-site response is guaranteed for two business days after determination that a site visit is required for weekday visits. There is no Preventative Maintenance service included in Gold Level support. Software patches and new versions of licensed Software are available.

Our other maintenance programs, Platinum and PlatinumPLUS, provide long term service guarantees for some products. Sorters (AMH) and 24-Hour Libraries are products for which we provide a ten (10) year life expectancy. The Gold program does not offer guaranteed ten (10) year life expectancy.

Some products, particularly Sorters (AMH) and 24-Hour Libraries, may receive Hardware Revisions from time to time. These Revisions are not included in the Gold level support.

The Gold level program permits you to be selective about the products covered by maintenance. If an item is covered, all of that same item must be covered. As such you may only discontinue Gold support on items if all of a particular item are not covered. You may remove items from maintenance if you no longer use a particular item.

- iii) **Platinum Level Support:** Services available via the EnvisionWare Customer Center portal during Standard Support Hours and via toll-free telephone in North America 24x7 365 days per year.

These services include the Knowledge Base, Customer Forum access, Support Case management, Enhancement and Defect tracking, software downloads, and documentation. LiveChat is available via the Customer Center during Standard Support Hours. Requests for service after Standard Support Hours must be made via the toll-free telephone number using your Platinum support access PIN.

Our objective is to have calls answered within 2 hours during all times and onsite response generally dispatched within 4 hours of determining that a site visit is required. The maximum interval for onsite arrival is 24 hours after determination that a site visit is required.

If a sorter (AMH) or a 24-Hour Library™ unit is purchased, a Preventative Maintenance site visit is performed within 60 days of each annual renewal. Continual, consecutive Platinum Level Support renewals assure a long life for Products covered by Preventative Maintenance. The lifetime coverage limit is specified on a per-item basis and in no case exceeds a guaranteed lifetime of ten (10) years. Sorters (AMH) and 24-Hour Libraries are guaranteed for a lifetime of ten (10) years provided there is continued Platinum maintenance coverage from the Effective date. Any lapse in coverage for a period of more than 30 days will void the ten (10) year guarantee.

Software patches and new versions of licensed Software as well as Hardware Revisions are available without added charge.

Platinum Level Service requires continued coverage of all items purchased from EnvisionWare that remain in use by you except for consumables.

- iv) **PlatinumPLUS Level Support:** Services available from a Resident Technician via the EnvisionWare Customer Center portal and via a dedicated telephone number 24x7, 365 days per year.

“**Resident Technician**” means a local field technician employed by us that dedicates 50% of his or her time to service your library. The Resident Technician’s priority is focused on your uptime.

Support services include the Knowledge Base, Customer Forum access, Support Case management, Enhancement and Defect tracking, software downloads and documentation. LiveChat to the Atlanta Support Center is available via the Customer Center during Standard Support Hours.

Our objective is to have telephone calls answered by the Resident Technician within 1 hour during all times, to have onsite response dispatched within 2 hours of determining that a site visit is required, and to have the maximum interval for onsite arrival to be 6 hours or less after determining that a site visit is required.

Preventative Maintenance is included. This service is continual and performed incrementally each month by the Resident Technician and/or other EnvisionWare technicians and engineers as required. The Preventative Maintenance service includes proactive replacement of parts, routine cleaning, system updates and performance testing and certification.

Continual, consecutive PlatinumPLUS renewals assures a long life for Products covered by Preventative Maintenance. The lifetime coverage limit is specified on a per-item basis and in no case exceeds a guaranteed lifetime of ten (10) years. Sorters (AMH) and 24-Hour Libraries are guaranteed for a lifetime of ten (10) years provided there is continued PlatinumPLUS maintenance coverage from the Effective date. Any lapse in coverage for a period of more than 30 days will void the ten (10) year guarantee.

The Resident Technician can provide or coordinate ongoing training and orientation for new staff. Spare parts are stocked locally. You must provide network access, locked storage and facility and computer access to facilitate the proactive delivery of services. PlatinumPLUS customers have a direct escalation path to the Director of Support and Professional Services.

Software and firmware updates as well as Hardware Revisions are available without added charge and will be applied by the Resident Technician and/or other EnvisionWare technicians and engineers as required.

In addition to Support, Preventative Maintenance, and proactive upgrades the Resident Technician will be available for consultation and planning to aid in rollout and system wide upgrade programs that include any EnvisionWare applications. The Resident Technician can provide insight into pending releases and can serve as your advocate for product enhancements.

The Resident Technician will collaborate with your staff to develop a routine schedule for reporting and status meetings.

When a Resident Technician is scheduled away from the local area, such as during vacation time, a backup technician will be assigned to provide the PlatinumPLUS services. The backup technician will provide the same response times as the Resident Technician.

PlatinumPLUS Level Service requires continued coverage of all items purchased from EnvisionWare that remain in use by you except for consumables.

- C. Should we fail to achieve the applicable performance objective for the Platinum or PlatinumPLUS Level Maintenance Programs measured as an average of all failures over a calendar quarter not meeting the applicable objective of all incidents and if you have notified your dedicated EnvisionWare technician or our Director of Support via email (with appropriate details of the case number and the failure) no later than thirty (30) calendar days from the end of the calendar quarter in which failure occurred, we will credit the next invoice to you in the amount of one month of maintenance as prorated for that item being serviced. The measurements will reset each calendar quarter.
- D. A failure to achieve a service objective shall not be a breach of the maintenance agreement or give rise to a credit if and to the extent that failure to achieve a service objective was primarily caused by any one or more of the following:
 - i) Prioritization of tasks or reduction of resources requested by you in writing with the written understanding by the parties that we will be excused by any resulting service level impact;
 - ii) Occurrence of a Force Majeure event (as defined herein);

- iii) Any breach, failure to perform an agreed upon responsibility, user error or other act or omission of you or your customers, third party contractors or agents that materially prevents us from achieving the applicable service level; or,
- iv) Problems originating from your facility, network, hardware, software, hosting or storage provider, server or other provider, that are outside the scope of our services.

E. Force Majeure Events. Except for payment obligations by you, neither party shall be held responsible for any delay or failure in performance of any obligation under this Agreement to the extent that delay or failure is caused by fire, flood, explosion, war, act of terrorism, strike, embargo, government requirement, civil or military authority, act of God, act or omission of carriers or other similar causes beyond its control (each, a “**Force Majeure**” event). If any Force Majeure event occurs, the party delayed or unable to perform (“**Delayed Party**”) shall give immediate notice to the other party (“**Affected Party**”), and the Delayed Party, upon giving prompt notice to the Affected Party, shall be excused from performance under this Agreement for the duration of the Force Majeure event, provided, however, that the Delayed Party shall take all reasonable steps and cooperate with the Affected Party to avoid or remove the cause of non-performance and shall resume performance hereunder with dispatch when the cause is removed; and provided further that if the Delayed Party cannot within sixty (60) days remove the cause of non-performance, the Affected Party may terminate this Agreement.

20. Re-establishing Maintenance After a Lapse:

- A. If your budget or other reason prevents you from acquiring maintenance or local ordinance prevents an annual agreement in advance of a fiscal period, your system will not be disabled by expiration of the maintenance agreement, but, as of the date of expiration, you will not have further access to updates, upgrades or technical support.
- B. If you later choose to resume maintenance, you will be charged as follows:
 - i) The full amount of the next twelve (12) months of maintenance; and,
 - ii) Any time and costs for updating Hardware or Software or for on-site visits; and,
 - iii) A catch-up fee as follows:
 - (1) for Software maintenance: 50% of the amount of maintenance that would have been paid if maintenance had been maintained (calculated on an annual basis) or
 - (2) for Hardware maintenance: 100% of the amount of maintenance that would have been paid if maintenance had been maintained (calculated on an annual basis), subject to the availability of support for the Hardware you have at the time of re-establishing maintenance.
- C. The amounts above cover the continuing development and evolution of the system during your lapsed period. The fact that you did not avail yourself of telephone or other support

services during the period the Produce was covered by maintenance is no cause for adjustment. If you have replaced Hardware that is no longer supported by us, in order to be eligible for re-establishment of maintenance on the Hardware you will need to purchase new Hardware from us. As part of re-establishing maintenance we will provide you with the updates to the Software

D. Re-establishment of lapsed maintenance is permitted only once.

21. All notices required to be given pursuant to this Agreement shall be given in writing and delivered by fax, hand, certified first class mail, email or overnight courier, addressed to the receiving party at the address stated on the first page of this Agreement to the contact information set forth below. Each party will provide written notice to the other party in the event of a change in the contact information below. Notice shall be deemed given (i) on the date when sent by fax to the fax number specified below, (ii) on the date when delivered by hand to the address specified below, (iii) three (3) days after mailing by certified first class mail, (iv) one (1) day after delivering to a recognized overnight delivery carrier, or (v) on the date when sent by electronic mail, provided that confirmation is sent by one of the other foregoing methods.
22. This Agreement constitutes the entire agreement and understanding between the parties concerning the subject matter hereof, and cancels, terminates, and supersedes all prior written and oral understandings, sales and promotional materials, agreements, proposals, promises and representations of the parties or any other person with respect to any subject matter contained herein. No representation or promise hereafter made with respect to the subject matter of this Agreement, nor any modification or amendment of this Agreement, shall be binding unless in writing and signed by the parties. The provisions of these Terms and Conditions shall control in the event of any conflict with any provisions in the EULA in Exhibit B.
23. Professional Services. Upon request and agreement between the parties, we shall provide you with professional consulting or training services (“**Professional Services**”) according to the applicable Professional Services Statement of Work (“**SOW**”, a sample of which is attached hereto as Exhibit D). The parties acknowledge that the scope of the Professional Services provided hereunder consists solely of any or all of the following: (a) assistance with Software or Hardware installation, deployment, and usage; (b) training in use of the Software or Hardware; and, (c) delivery of additional related Software or code proprietary to us. You shall have a limited license right to use any deliverables (including any documentation, code, Software, training materials or other work product) delivered as part of the Professional Services (“**Deliverables**”) solely in connection with your permitted use of the Software, subject to all the same terms and conditions herein as apply to your Software license, and subject to any additional terms and conditions provided with the Deliverables. You may order Professional Services under a SOW describing the work to be performed, fees and any applicable milestones, dependencies and other technical specifications or related information. Each SOW must be signed by both parties before we will commence work under such SOW. If the parties do not execute a separate SOW, the Services shall be provided as stated on the Quotation. You agree to reimburse us for reasonable travel and lodging expenses as incurred.

24. The EnvisionWare One Year 100% Money Back Hardware and Software Performance Guarantee is set forth in the attached Exhibit E.
25. Section 15 of the EULA is hereby amended as follows: Delete “the State of Georgia” and insert “the state of the customer’s principle business address on page 1.” The remainder of the sentence is as in the original. This Agreement shall be governed by the laws of the state in which you maintain your main office.
26. Section 8A of the EULA (Indemnification), first sentence, is hereby amended as follows: Delete the first appearance of “claims” and insert “actions, suits, proceedings, claims, losses, liabilities, damages, and expenses (including attorneys’ and experts’ fees and sums reasonably expended in investigation and settlement of litigation, pending or threatened)”. The remainder of the sentence is as in the original.
27. Section 9, Subsections A and B, of the EULA (Disclaimer of and Limitations on Damages), is hereby amended to read as follows: “...(A) FOR ANY SOFTWARE AND HARDWARE PRODUCTS COVERED UNDER THIS EULA, EXCEED TWO (2) TIMES THE PURCHASE PRICE FOR THE SOFTWARE AND HARDWARE OR (B) FOR ANY SERVICES, EXCEED TWO (2) TIMES THE FEES PAID BY YOU FOR THE SERVICES (EXCLUDING MAINTENANCE AND SUPPORT SERVICES) WHICH DIRECTLY CAUSED THE DAMAGES ALLEGED...”.
28. Term: This agreement shall be in effect for three (3) years from date of execution. After the initial term, this agreement may be renewed annually by written agreement signed by Customer and EnvisionWare.

Either party may cancel this agreement at any time with sixty (60) days written notice.

Exhibits attached:

Exhibit A: Quotation

Exhibit B: EULA

Exhibit C: Insurance Certificate

Exhibit D: Sample Professional Services Statement of Work

Exhibit E: Performance Guarantee

Exhibit F: Payment Card Industry Data Security Standard for U.S. Customers

[Remainder of this page intentionally left blank]

Exhibit A –

Quotation(s) (to be attached)

ITEMS NOTED IN THE QUOTATION:

- A reference to this main Agreement stating the Effective Date and agreement number
- Maintenance agreement program level
- Discounted maintenance rates for prepayment of future maintenance
- Rate schedule for Professional Services Implementation Consultants
- Rate schedule for time and materials services

The items listed in the following quotations include an estimate of goods and services deemed necessary at the time of contract signing. Should changes be made to the type of item to be purchased by the City of Salinas and the new item does not appear on the attached Quotations, the prices quoted in EnvisionWare, Inc.'s response to the City of Salinas RFP for RFID/Self Service Systems will be honored by EnvisionWare. Changes may also be made in the number of items ordered by the City of Salinas and the prices will remain the same over the three-year term of the contract.

Exhibit B –

EnvisionWare, Inc. End User License Agreement and Limited Warranty

**Exhibit C –
Insurance Certificate**

Exhibit D –

**Professional Services Statement of Work (“SOW”)
SAMPLE**

NOTE: An actual Scope of Work will be created during project planning. The SOW is generally created after introductory meetings and in some cases after some introductory training. The SOW defines your goals, the deliverables and the measurements that define completion.

Project Scope:

The objective of this project is to deliver, configure (to specifications) and install an EnvisionWare _____ software/hardware solution in order to _____

To meet this objective your EnvisionWare Professional Services Implementation Consultant will work with you during the planning phase of the project to understand your product needs and your desired patron and staff experience.

Services Provided:

1. Installation of Product(s)
2. Training
3. Post-Installation Follow-Up
4. Transition to Support

Project Milestones:

1. Completion of Installation Phase
2. Completion of Post-Installation Phase
 - a. Project Sign-Off
 - b. Transition to Support

Product Scope:

This project will consist of the following _____ solution.

- 1.
- 2.

EnvisionWare Responsibilities:

1. Ensure the Library is Prepared for the Onsite Installation
2. Training
3. Constant Follow-up and Update Provided to the Customer

Customer Responsibilities:

1. Network Management
 - a. Static IP address for _____
 - b. _____
2. Power Outlets and Ethernet connections _____

Acceptance Testing and Criteria

1. Acceptance Criteria: Acceptance tests shall be conducted at your site or sites and on your equipment to ensure that the Product (i) performs according to the Specifications without material error and (ii) can be effectively utilized in your operating environment. The following are defined as the “**Acceptance Criteria**”:

A. Item	Test	Pass
B. Item	Test	Pass

2. Project Acceptance: When all individual acceptance tests pass for all items on a Sales Order Confirmation the Customer is required to acknowledge the Project Acceptance via electronic submission. Submission is an indication that the mutually defined tests pass for all installed devices and software listed on the Sales Order Confirmation.

Submitting Project Acceptance activates support services and provides all support assistance in accordance with the Maintenance Program Agreement applicable to your account. Support is unable to assist a customer until Project Acceptance is submitted

NOTE: Acceptance indicates that all tests are completed and the Customer’s access to Support is activated. It does not necessarily mean that there are no outstanding or follow-up issues. In some situations a Support Case may be opened to resolve an issue via the standard support channel. Some Cases may represent enhancement requests and others defects, which do not prevent the live use of the system.

After Acceptance the Support Center will copy your Implementation Consultant on all communications for a period of two (2) weeks. Support has access to all documentation created during your project and is proficient in assisting customers in real time with critical and non-critical support concerns. The Support Center has emergency access to a Consultant during the transition period. Consultants are engaged in scheduled projects following the date scheduled for acceptance testing and are generally not available during business hours.

**Exhibit E –
Performance Guarantee**

EnvisionWare One Year 100% Money Back Hardware and Software Performance Guarantee

1. For one (1) year from date of installation, EnvisionWare provides a money back performance guarantee as described herein for hardware and software components (together, “**Components**”) delivered as part of a turnkey RFID Product consisting of EnvisionWare products, services and supplies (the “**Performance Guarantee**”). EnvisionWare will refund to you 100% of the Component prices you have paid EnvisionWare if within the first year after the date of installation the hardware or software system does not perform according to the component performance criteria provided as part of a Quotation and confirmed and finalized as part of the Statement of Work (the “**Performance Criteria**”) and we fail to timely address any performance problems of which you advise us via a case filed and managed in the EnvisionWare Customer Center.
2. At the time of installation, an EnvisionWare consultant will perform a series of acceptance tests, which you will certify when successfully completed, demonstrating that the system and all of its Components perform according to the Performance Criteria. The acceptance tests are developed in advance of implementation and agreed upon as part of accepting the Statement of Work. When you sign for acceptance, you are confirming that the system performs according to the Performance Criteria. Your acceptance is your confirmation of final payment due by you.
3. The Performance Guarantee described herein is in consideration of a customer environment that is maintained in accordance with common and reasonable standards established for the installation including distance restrictions between equipment, interference devices, and other specifications that must be met in order for the system to remain at the proper performance level. When a customer moves equipment or otherwise compromises the performance of a system due to component relocation either of those items installed by EnvisionWare or those items adjacent to installed components that are moved into a sphere that causes interference, the above Performance Guarantee and our warranty do not apply to a system maintained for that location. The customer is responsible for restoring the environment and for any costs incurred by EnvisionWare as a result of providing on-site or other service for environmental changes implemented by the customer. Upon a remedy of this situation and appropriate remuneration for the costs of on-site services, the remaining warranty period (if any) will be resumed. The Performance Guarantee will not be extended during this time.
4. The Performance Guarantee shall not apply to any systems, or Components thereof which do not meet the Performance Criteria due to intentional or unintentional damage or misuse caused by you or your patrons, contractors, facilities, installation or environment, or caused by lightning, flooding, hurricanes, earthquakes or other natural causes, acts of God, acts of war or terrorism, power surges, brownouts, blackouts, other power interruptions, or the like, or used in a manner inconsistent with the intended use of the Components.
5. Should any Component fail during the Warranty Period set forth in the EULA in Exhibit B, EnvisionWare will, at its option, repair or replace the Component. Should the performance of

any Component be compromised for the same failure more than three times in the first year after installation, EnvisionWare will replace the Component with an item of equal value and performance. Where style is considered, such as for RFID gates or kiosks, a replacement will be provided that complements the style of the existing Component as closely as is reasonably possible. Upon completion of this remedy, you will sign a service order acceptance confirming that the repaired or replaced Component is in conformance with the Performance Criteria originally used for the initial installation acceptance. This Section 5 shall control in the event of any conflict with any similar provision in the EULA.

6. If the replacement Component fails to perform according to the Performance Criteria, at that time you may request a return of the Component or Components or the system. Upon receipt of a written request (sent by fax, U.S. Postal Service or overnight delivery; email is not acceptable) we will either issue a return authorization or come on site to inspect prior to return. We will issue a refund for the full price of the Component or Components within thirty (30) days of receipt of the returned item or items.

EXHIBIT F: PAYMENT CARD INDUSTRY DATA SECURITY STANDARD FOR U.S. CUSTOMERS

For customers purchasing any EnvisionWare eCommerce product the following provisions apply to eCommerce products:

ENVISIONWARE will not have access to CUSTOMER personal information, including, without limitation, social security number, driver's license number or other state issued identification number, date of birth, personal identification number or password, credit card number(s) and/or bank account number(s); and

WHEREAS, in light of the sensitive and confidential nature of the information, the parties enter into this amendment agreement.

NOW, THEREFORE, in consideration of the promises set forth in the Agreement between the Parties and the promises in this Addendum, ENVISIONWARE and CUSTOMER agree as follows:

A. ENVISIONWARE REPRESENTATIONS AND WARRANTIES

ENVISIONWARE represents and warrants that its Services under the Agreement and this Addendum shall comply with Payment Card Industry Data Security Standard (PCI DSS) and further represents and warrants the following to CUSTOMER:

1. that the product being purchased by CUSTOMER currently complies with the PCI DSS;
2. that it is obligated to maintain compliance with the PCI DSS; including remaining aware at all times of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at ENVISIONWARE's sole cost and expense except for costs incurred by TCLPL for becoming and maintaining PCI compliance via Trustwave self assessment or similar annual subscription services;
3. that it is responsible for the security of cardholder data that it possesses by means of its Agreement with CUSTOMER, and that this acknowledgement satisfies Section 12.8 of the PCI DSS requiring the Parties to maintain a written agreement acknowledging that ENVISIONWARE has responsibility for the security of cardholder data it possesses by means of its Agreement with CUSTOMER; and
4. that its collection, access, use, storage, disposal and disclosure of Personal Information does and will comply with all applicable federal, state, and foreign privacy and data protection laws, as well as all other applicable regulations and directives.

B. ENVISIONWARE SERVICES

ENVISIONWARE will use all reasonable and necessary precautions to prevent anyone other than its authorized employees from monitoring, using, or gaining access to CUSTOMER personal information. ENVISIONWARE will use all reasonable and necessary precautions to

protect CUSTOMER personal information from loss, corruption or unauthorized access or alteration and to prevent the disclosure of CUSTOMER personal information to anyone other than authorized ENVISIONWARE or CUSTOMER employees.

ENVISIONWARE will periodically test and re-evaluate the effectiveness of such precautions. ENVISIONWARE will notify CUSTOMER within 24 hours, if such precautions are violated and ENVISIONWARE has reason to believe that CUSTOMER personal information is affected or disclosed or in danger of being affected or disclosed. Notwithstanding the foregoing, ENVISIONWARE may use, process, view the contents of or monitor CUSTOMER personal information to the extent necessary for ENVISIONWARE to perform under this Agreement.

ENVISIONWARE eCommerce policies require that CUSTOMER establish passwords for the VeriFone gateway known only to CUSTOMER. ENVISIONWARE requires remote access to the CUSTOMER software for diagnostic purposes when a problem occurs but will request that CUSTOMER change any password provided to ENVISIONWARE for the remote session. ENVISIONWARE will not, under any circumstances, maintain a persistent connection to TCLPL internal eCommerce-related systems and will access only when a problem occurs and when CUSTOMER enables remote access. TCLPL is required to assert control as above and to configure all eCommerce-related passwords to industry-approved secure passwords that are changed every 90 days. CUSTOMER must maintain a list of users who are approved to access the VeriFone gateway.

In the event that security vulnerabilities are identified, ENVISIONWARE will promptly notify CUSTOMER and will provide instructions to mitigate risk of that vulnerability being exploited. ENVISIONWARE will provide a patch release or security update within 48 hours of a security vulnerability being discovered, and will provide support as necessary to properly deploy the patch or security update at ENVISIONWARE's sole cost and expense while TCLPL is under maintenance.

ENVISIONWARE will notify CUSTOMER of any security breach within 24 hours of notice or discovery of same. CUSTOMER will notify ENVISIONWARE of any security breach or discovery of same within 24 hours. TCLPL's maintenance agreement will be upgraded to 24x7 live support to facilitate rapid reporting and remedy of issues. ENVISIONWARE shall immediately investigate same and shall coordinate its investigation with CUSTOMER to verify that any breach has been remedied and any security intrusion or flaw eliminated as the sole cost and expense of ENVISIONWARE, unless said security breach was the result of actions or inactions of CUSTOMER.

C. LIABILITY AND INDEMNIFICATION

ENVISIONWARE agrees that it is responsible for the security of cardholder data that it possesses by means of this Agreement, and that the indemnification provision of this section applies to any failure of ENVISIONWARE to protect cardholder data from unauthorized disclosure resulting from a lack of compliance with the Payment Card Industry Data Security Standard or arising from any other negligent act or omission by ENVISIONWARE. Any breach in security related to failure of ENVISIONWARE to protect cardholder data resulting from a

violation of any obligation imposed by or established pursuant to the Payment Card Industry Data Security Standard shall constitute a “material breach” of the Agreement.

ENVISIONWARE will not be liable for the disclosure, monitoring, loss, alteration or corruption of CUSTOMER private information to the extent it results from CUSTOMER’s failure to implement reasonable security measures to protect against the unauthorized use of facilities, computers network access devices and passwords.

Notwithstanding the foregoing, ENVISIONWARE agrees to that CUSTOMER will be insured under its VeriFone PCI Assurance Program, which provides an AIG zero deductible insurance policy with up to \$100,000.00 of coverage per breach and up to a maximum annual limit of \$500,000.00 per Exhibit: PCI Assurance. ENVISIONWARE agrees to renew the policy, or equivalent, and keep CUSTOMER as an additional insured party through the duration of the contract including all future renewal years. TCLPL can access the insurance program online to verify coverage at any time.

D. ENTIRE EXHIBIT

This EXHIBIT constitutes the entire PCI DSS terms of the Agreement between the parties and shall supersede and merge all prior and contemporaneous communications, understandings and agreements with respect to the subject matter hereof.

PCI ASSURANCE COVERAGE SUMMARY

CUSTOMER (Merchant) will be enlisted in the PCI Assurance Program, which is merchant coverage for an actual breach as well as the costs of a potential credit card breach.

The following is an outline of coverage, benefits and clarifications:

- Coverage includes a breach and/or the costs associated with a suspected breach
- \$100,000.00 of insurance per incident
\$500,000.00 annual maximum insurance per CUSTOMER
\$0.00 deductible
Maximum annual credit card transaction volume per CUSTOMER: \$999,999.00
- Underwritten by AIG Insurance
- Coverage is valid even if CUSTOMER(Merchant) is not currently PCI Compliant.
However, merchant must become PCI compliant to reinstate the policy after a reported incident.
- Claim processing time is 30-60 days.
- Coverage is provided only when terminals are delivered under a subscription program.