

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
BOARD ACTION SUMMARY

DEPT: Library

BOARD AGENDA #: \*B-3

AGENDA DATE: December 6, 2016

**SUBJECT:**

Approval of an Agreement with EnvisionWare, Inc. for the Provision of a Radio Frequency Identification Solution for the Main Library as a Result of a Request for Proposal Process

**BOARD ACTION AS FOLLOWS:**

No. 2016-598

On motion of Supervisor Chiesa, Seconded by Supervisor Withrow  
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, DeMartini, and Chairman Monteith

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1)  Approved as recommended

2)  Denied

3)  Approved as amended

4)  Other:

MOTION:

ATTEST:   
PAM VILLARREAL, Assistant Clerk

File No.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
AGENDA ITEM**

DEPT: Library

Urgent

Routine

*DSM*

BOARD AGENDA #: \*B-3

AGENDA DATE: December 6, 2016

CEO CONCURRENCE: *pkc*

4/5 Vote Required: Yes  No

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**SUBJECT:**

Approval of an Agreement with EnvisionWare, Inc. for the Provision of a Radio Frequency Identification Solution for the Main Library as a Result of a Request for Proposal Process

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**STAFF RECOMMENDATIONS:**

1. Approve an agreement with EnvisionWare, Inc. for installation, project management, staff training, and on-going support and maintenance of a Radio Frequency Identification (RFID) Solution, in the amount not to exceed \$325,668.63.
2. Authorize the County Library Director, or her designee, to sign the agreement, and any amendments thereto, with EnvisionWare, Inc. to provide a Radio Frequency Identification Solution.
3. Direct the Auditor Controller to transfer appropriations from Fixed Assets to Services and Supplies as detailed in the attached budget journal.

**DISCUSSION:**

Check-out and check-in for library books and materials by hand are labor intensive processes that require staff to remain stationed behind a service desk. The physical action of checking out and checking in library materials is exceptionally repetitive since each item must be picked up and scanned one at a time. Over time these repetitive motions can sometimes lead to pain and on-the-job injuries.

Among the thirteen library branches there are approximately 30,000 movie and documentary DVDs. To alleviate the risk of theft, only the empty cases are stored on library shelves for customers to choose from. Customers wanting to check out a DVD must take the empty DVD case to staff stationed at a check-out desk. Using the self-check-out station is not an option. Staff must take the empty DVD case to a secure staff location, locate the corresponding disc, open the case, insert the disc into the case, close the case and then return to the waiting customer at the desk. This process is extremely inconvenient and time consuming for both staff and library customers, and a poor customer service model.

Each year a large number of library books and materials go missing for various reasons such as being misplaced, misfiled, lost or stolen. Conducting a physical inventory would help locate many of the misplaced and misfiled books and materials. To inventory the nearly 680,000 items currently in the library collection would be a major undertaking because each item would need to be removed from the shelf one at a time, bar code scanned, and returned to its proper

## Approval of an Agreement with EnvisionWare, Inc. for the Provision of a Radio Frequency Identification Solution for the Main Library as a Result of a Request for Proposal Process

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place on the shelf. Other than staff awareness, staff observation and the honor system, the Stanislaus County libraries do not have any electronic safeguards in place to protect the collection and prevent theft of library materials, nor locate misplaced or misfiled items.

To address and remedy these significant operational deficiencies and customer service issues, the Library wishes to implement a Radio Frequency Identification (RFID) Solution. RFID technology has been around for many years and is used by a high percentage of libraries around the country. Simply put, RFID is a wireless system comprised of two components; tags and readers. The tags are small electronic devices that consist of a small chip and antenna. The reader is a device that has one or more antennas that emit radio waves and receive signals back from the RFID tag. An RFID tag is placed on each item in the library collection and is deactivated upon check-out by placing the stack of books on top of the reader. The reader can read several medium size books and DVDs at one time. A receipt listing all of the materials and the due date is printed out for the customer and the customer exits through the security gates installed at each of the public exits. If an item has not been checked out, the security gate alarm will alert staff, either audibly or with a pop up message on the computer monitor, and staff can then approach the customer and offer assistance with checking out their items.

The General Services Agency (GSA) – Purchasing Division, in collaboration with the Library, developed Request for Proposal (RFP) #16-42-CB Radio Frequency Identification Solution for the Main Library. Among other benefits the RFID system proposed would provide:

- Significant productivity gains through reduction in labor-intensive workflow processes;
- enhanced customer experience;
- higher levels of customer self-service; and
- improved inventory and shelf-accuracy.

The RFP was issued on July 15, 2016. Bid notifications were sent to 700 vendors. Nine vendors downloaded the RFP. Questions were received from one potential proposer and Addendums 1 – 3 were issued in response. The RFP closed on August 25, 2016 and GSA Purchasing received two proposals from the vendors listed below.

- EnvisionWare, Inc., of Duluth, Georgia; and
- Bibliotheca, of Norcross, Georgia

Both proposals received a pass for Phase 1 which included GSA Purchasing's review and evaluation of the proposals and financials submission and were forwarded on to the Evaluation Committee comprised of professionally qualified Library Leadership staff and County Information Technology staff.

Phase II was completed by the Evaluation Committee. Both proposals were evaluated and scored on each proposer's response; clarity and completeness of the submitted proposal; vendor reputation, experience, and qualifications in the RFID field; design, functionality and suitability of the proposed solution; and understanding of the project with 80 points possible. The scores of the Evaluation Committee were then forwarded to GSA Purchasing where they were aggregated to determine the Phase II score for each proposer.

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In Phase III the pricing proposals submitted were evaluated by GSA Purchasing. The final 20 points were assigned to the proposer submitting the lowest pricing and the other proposer received a discounted percentage of the 20 points based on the higher pricing amount.

The award of the contract was made to the vendor whose proposal best met the criteria set forth in the RFP and provides the best value to the County, with price and all other factors considered.

Evaluation Phase	Total Points Available	EnvisionWare, Inc.	Bibliotheca
Phase I	Pass/Fail	Pass	Pass
Phase II	80	64.50	56.67
Phase III	20	19.15	20.00
Total Points	100	83.65	76.67

As shown above, EnvisionWare, Inc. was the successful proposer with the high score of 83.65 compared to 76.67 for Bibliotheca. On September 12, 2016 GSA Purchasing issued a Notice of Award to EnvisionWare, Inc. and a notice of Non-Award to Bibliotheca. No letter of protest was received during the five (5) days protest period of the RFP process.

EnvisionWare, Inc. has been in business providing RFID solutions for eighteen years, and has installed RFID systems for a large number of libraries including the San Diego County Library, Las Vegas-Clark County Library District, Sacramento Public Library, and Riverside County Library System.

The Agreement with EnvisionWare, Inc. has a term beginning on December 6, 2016 and ending June 30, 2018 to provide a turn-key RFID Solution system, including tags, specified hardware, software, installation, project management and staff training. The Agreement also provides a one year extended warranty period on all hardware and software at no additional cost, and a 100% money-back performance guarantee to ensure the system meets the specified performance level or refund the entire purchase price and remove the system at no charge to the Library.

Once implemented, the RFID Solution will be capable of increasing self-check-out use by customers up to 90%; thereby improving the customer experience, reducing repetitive motions involved in these transactions, improving circulation of materials management efficiency, tracking and safeguarding the library collection, and providing the platform for offering additional services to patrons including redeploying staff to expand library service both inside the library and out in the community.

### **POLICY ISSUE:**

County Purchasing policies and procedures require a competitive bid process for new goods and services in excess of \$45,000, unless proven to be a Sole Source. Contracts in excess of \$100,000 require Board of Supervisors approval.

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**FISCAL IMPACT:**

Appropriations in the amount of \$405,000 exist in the Fiscal Year (FY) 2016-2017 Adopted Final Budget for Radio Frequency Identification (RFID) Solution. The attached budget journal (Attachment 2) transfers appropriations in the amount of \$272,000 from Fixed Assets to the appropriate Services and Supplies accounts for the FY 2016-2017 Agreement costs. A request to move the excess balance from Fixed Assets will be included in the Library’s Mid-Year Budget submission.

<b>Cost of recommended action:</b>	\$	325,669
<b>Source(s) of Funding:</b>		
Library Fund Balance FY 2016-2017 Budget		325,669
<b>Funding Total:</b>	\$	325,669
<b>Net Cost to County General Fund</b>	\$	-

<b>Fiscal Year:</b>	2016-2017
<b>Budget Adjustment/Appropriations needed:</b>	Yes

**Fund Balance as of November 1, 2016** 10,105,309

**BOARD OF SUPERVISORS’ PRIORITY:**

Approval of the EnvisionWare, Inc., agreement supports the Board of Supervisor’s priority of an Efficient Delivery of Public Services by increasing e-government services and transactions, and improving customer satisfaction.

**STAFFING IMPACT:**

The Department anticipates using mostly volunteers and part time staff for tagging the approximate 680,000 Library material items. Library staff will oversee, manage and monitor the Radio Frequency Identification (RFID) Solution Project and EnvisionWare agreement. Upon full implementation of the Radio Frequency Identification (RFID) Solution staff working the service desks will be reassigned to:

- planning, preparing and conducting children and adult programming including computer training;
- providing enhanced customer service throughout the library;
- assisting and training customers on checking out and downloading library digital items onto their personal devices; and
- monitoring and providing assistance as needed for the self-check-out stations and security gate alerts.

**CONTACT PERSON:**

Diane McDonnell, County Librarian Telephone 558-7801

**ATTACHMENT(S):**

1. EnvisionWare, Inc., Agreement
2. Budget Journal

Attachment 1

EnvisionWare, Inc. Agreement

**AGREEMENT  
FOR  
INDEPENDENT CONTRACTOR SERVICES**

This Agreement for Independent Contractor Services (the "Agreement") is made and entered into by and between the County of Stanislaus ("County") and EnvisionWare, Inc., a Georgia corporation, ("Contractor") as of December 7, 2016.

**Recitals**

WHEREAS, the County issued a Request for Proposal on July 15, 2016 designated as RFP #16-42-CB, hereto and hereafter referred to as RFP

WHEREAS, the Contractor has submitted a proposal in response to the County RFP;

WHEREAS, the Contractor is specially trained, experienced and competent to perform and has agreed to provide such services; and

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

**Terms and Conditions**

1. **Scope of Work**

1.1 The Contractor shall furnish to the County upon execution of this Agreement or receipt of the County's written authorization to proceed, those services and work set forth in **Exhibit A**.

1.2 All documents, drawings and written work product prepared or produced by the Contractor under this Agreement, including without limitation electronic data files, are the property of the Contractor; provided, however, the County shall have the right to reproduce, publish and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Contractor may copyright the same, except that, as to any work which is copyrighted by the Contractor, the County reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so.

1.3 Services and work provided by the Contractor at the County's request under this Agreement will be performed in a timely manner consistent with the requirements and standards established by applicable federal, state and County laws, ordinances, regulations and resolutions, and in accordance with a schedule of work set forth in Exhibit A. If there is no schedule, the hours and times for completion of said services and work are to be set by the Contractor; provided, however, that such schedule is subject to review by and concurrence of the County.

2. **Consideration**

2.1 County shall pay Contractor as set forth in Exhibit A.

2.2 Except as expressly provided in Exhibit A of this Agreement, Contractor shall not be entitled to nor receive from County any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement. Specifically, Contractor shall not be entitled by

virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever.

2.3 County will not withhold any Federal or State income taxes or Social Security tax from any payments made by County to Contractor under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. County has no responsibility or liability for payment of Contractor's taxes or assessments.

2.4 Pursuant to Penal Code section 484b and to Business and Professions Code section 7108.5, the Contractor must apply all funds and progress payments received by the Contractor from the County for payment of services, labor, materials or equipment to pay for such services, labor, materials or equipment. Pursuant to Civil Code section 1479, the Contractor shall direct or otherwise manifest the Contractor's intention and desire that payments made by the Contractor to subcontractors, suppliers and materialmen shall be applied to retire and extinguish the debts or obligations resulting from the performance of this Agreement.

### 3. Term

3.1 The term of this Agreement shall be from the date of approval of this Agreement until completion of the agreed upon services unless sooner terminated as provided below or unless some other method or time of termination is listed in Exhibit A.

3.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

3.3 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, (b) sale of Contractor's business, (c) cancellation of insurance required under the terms of this Agreement, and (d) if, for any reason, Contractor ceases to be licensed or otherwise authorized to do business in the State of California, and the Contractor fails to remedy such defect or defects within thirty (30) days of receipt of notice of such defect or defects.

3.4 The County may terminate this agreement upon 30 days prior written notice to the Contractor. Termination of this Agreement shall not affect the County's obligation to pay for all fees earned and reasonable costs necessarily incurred by the Contractor as provided in Paragraph 2 herein, subject to any applicable setoffs.

### 4. Required Licenses, Certificates and Permits

Any licenses, certificates or permits required by the federal, state, county or municipal governments for Contractor to provide the services and work described in Exhibit A must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by Contractor at no expense to the County.



5. Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in Exhibit A, Contractor shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Contractor to provide the services identified in Exhibit A to this Agreement. County is not obligated to reimburse or pay Contractor for any expense or cost incurred by Contractor in procuring or maintaining such items. Responsibility for the costs and expenses incurred by Contractor in providing and maintaining such items is the sole responsibility and obligation of Contractor.

6. Insurance

Coverage Required: Contractor shall obtain, and maintain at all times during the term of this Agreement, insurance coverage in the amounts and coverage specified in the attached "Exhibit B."

7. Defense and Indemnification

7.1 To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend the County and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by the Contractor or Contractor's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use; provided, however, such indemnification shall not extend to or cover loss, damage or expense arising from the sole negligence or willful misconduct of the County or its agents, officers and employees.

7.2 Contractor's obligation to defend, indemnify and hold the County and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Contractor to procure and maintain a policy of insurance.

8. Status of Contractor

8.1 All acts of Contractor and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Contractor relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of County. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Exhibit A, Contractor has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer or employee of the County is to be considered an employee of Contractor. It is understood by both Contractor and County that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

8.2 At all times during the term of this Agreement, the Contractor and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of County.

8.3 Contractor shall determine the method, details and means of performing the work and services to be provided by Contractor under this Agreement. Contractor shall be responsible to County only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement. Contractor has control over the manner and means of

performing the services under this Agreement. Contractor is permitted to provide service to others during the same period service is provided to County under this Agreement. If necessary, Contractor has the responsibility for employing other persons or firms to assist Contractor in fulfilling the terms and obligations under this Agreement.

8.4 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Contractor.

8.5 It is understood and agreed that as an independent Contractor and not an employee of County, the Contractor and the Contractor's officers, employees, agents, representatives or subcontractors do not have any entitlement as a County employee, and do not have the right to act on behalf of the County in any capacity whatsoever as an agent, or to bind the County to any obligation whatsoever.

8.6 It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's assigned personnel under the terms and conditions of this Agreement.

8.7 As an independent Contractor, Contractor hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

## 9. Records and Audit

9.1 Contractor shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photostatic, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

9.2 Any authorized representative of County shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by Contractor. Further, County has the right at all reasonable times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement.

## 10. Confidentiality

The Contractor agrees to keep confidential all information obtained or learned during the course of furnishing services under this Agreement and to not disclose or reveal such information for any purpose not directly connected with the matter for which services are provided.

## 11. Nondiscrimination

1.1. Non-Discrimination. During the performance of this Agreement, Contractor and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any Federal, State or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, genetic information, pregnancy related condition, marital

status, gender/sex, sexual orientation, gender identity, gender expression, age (over 40), political affiliation or belief, or military and veteran status. Contractor and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's non-discrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

11.2 Contractor shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

11.3 Contractor shall provide a system by which recipients of service shall have the opportunity to express and have considered their views, grievances, and complaints regarding Contractor's delivery of services.

12. Assignment

This is an agreement for the services of Contractor. County has relied upon the skills, knowledge, experience and training of Contractor and the Contractor's firm, associates and employees as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement without the express written consent of County which consent shall not be unreasonably withheld, delayed or conditioned. Further, Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

13. Waiver of Default

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

14. Notice

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Contractor or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To County:  
Stanislaus County Purchasing Agent  
1010 10<sup>th</sup> Street, Suite 5400  
Modesto, CA 95354

To Contractor:  
Michael J. Monk, CEO  
2855 Premiere Parkway, Suite A  
Duluth, GA 30097

15. Conflicts

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

16. Severability

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or county statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

17. Amendment

This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

18. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

19. Advice of Attorney

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

20. Construction

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

21. Governing Law and Venue

This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

[SIGNATURES SET FORTH ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties or their duly authorized representatives have executed this Agreement on the day and year first hereinabove written.

**COUNTY OF STANISLAUS**

**ENVISIONWARE, INC.**

By:   
Diane McDonnell, County Library Director

By: 

"County"

Printed name: Michael J Monk

APPROVED: BOS Resolution # 2014-598

Title: CEO

"Contractor"

APPROVED AS TO FORM:  
John P. Doering, County Counsel

By:   
Marc Hartley, Deputy County Counsel

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## EXHIBIT A

### A. SCOPE OF AGREEMENT

In response to the Request for Proposal 16-42-CB (RFP) for Radio Frequency Identification Solution (RFID) for the Main Library issued by the County on July 15, 2016, which is noted here for reference purposes only and not incorporated herein and should not be part of this agreement, Contractor shall provide to the County the product and services set forth in this Agreement and Exhibits.

### B. SCOPE OF WORK

I. The Contractor shall provide and implement a Radio Frequency Identification (RFID) Solution that includes tags, hardware, software, installation, project management, staff training and on-going support and maintenance and meets the following critical requirements:

1. Real-time integration with the Library's Integrated Library System (ILS); SirsiDynix Horizon.
2. All tags and devices writing to the tags must conform to ISO 28560-2 per NISO RP-6-2012.
3. Durable, ISO compliant RFID tags that easily affix to all circulating library items regardless of format and which are guaranteed for the lifetime of the item to which they are affixed.
4. Radio Frequency Identification Solution (RFID) conversion for the Library's existing staff circulation stations or the provision of new hardware which includes the RFID antenna for staff stations called Feig.
5. RFID pads and staff workstation upgrades that enable staff to use either barcode scanners or RFID pads to input barcodes in all ILS modules.
6. Shelf-reading and inventory tools that can accommodate any collection size with ease.
7. (American Disabilities Act) ADA-compliant, effective and attractive Feig security gates.
8. Easily maneuverable mobile tagging stations (or components) for lease.
9. Security options, other than locking cases, for audio-visual materials that provide effective theft-deterrence while reducing library handling requirements.
10. Comprehensive reporting capabilities.
11. Options to add an RFID-enabled internal and external book returns in the future.

II. Contractor shall develop and supply adequate training to meet County' needs, potentially a combination of classroom and instruction per branch as part of the implementation process, and provide County access to all product documentation related to County's RFID Solution. Training shall occur at the

County's facility as designated by the County and consist of a combination of train-the trainer and class room instruction that meets the County's preference. County is not limited to the number of staff that can attend trainings.

III. Contractor shall provide a twelve (12) month, 100% money-back performance guarantee on all equipment purchased and covered by a twelve (12) month extended warranty or service agreement. Contractor will make the system meet the specified performance level or refund the entire purchase price and remove the system at no charge to County.

IV. Contractor shall provide County with an all-inclusive twelve (12) month extended warranty or Platinum Level Support service agreement on all equipment, software and components as outlined in the Software End User License Agreement and Warranty ("EULA") attached hereto as Exhibit D, at no cost to County. Platinum Level Support Services are as follows:

1. **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 County Platinum support access PIN.

Contractor 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 County except for consumables.

2. On-going Annual Maintenance beginning in year two (2) forward will be continued and purchased under separate agreement(s).

V. Contractor's responsibilities and tentative\* time line for implementing a Radio Frequency Identification (RFID) Solution under this Agreement is as follows:

1. Phase 1: Planning (December 2016)

1.1 Formulate the EnvisionWare Stanislaus County Library RFID Solution

Project Team.

1.2 Set up a conference call with the Library Virtual Services Manager once the contract has been negotiated, signed and fully executed.

1.3 Visit County at the Main Library to assess details about the environment, interview staff and managers to discover high objectives, fears and concerns, and desired outcomes. The number of days on-site is dependent upon County Library key personnel availability.

1.4 Conduct an RFID Solution Project Planning conference call with County Library key personnel to establish the RFID Solution Project goals, activities and timeline.

1.5 Conduct an RFID Solution Pre-Installation conference call with County Library key personnel to discuss initial installation of seventy-one (71) Staff Stations with RFID reader, Feig antenna, cables and software; eleven (11) Feig single aisle security gates to read RFID; seven (7) Feig dual aisle security gates to read RFID; and training.

1.6 Submit an integrated design plan, the Statement of Work (SOW), for County's review and approval, and prepare the schedule for equipment delivery upon County approval of the SOW.

2. Phase 2: Project Implementation (December 2016 – June 2017\*)

2.1 Ship all tags, tagging carts and thirty (30) pre-configured staff station pads to the Salida Library located at 4835 Sisk Road, Salida, California, 95368, to arrive two days prior to installation date. Contact the County Library Virtual Services Manager with the date and approximate time of delivery so arrangements can be made to have County Library Information Technology (IT) staff on site to receive and check in the equipment.

2.2 Confirm County Library has received all tags and tagging equipment in good condition.

2.3 Provide an on-site visit to set up a partial order of staff stations and train Library staff and volunteers on the processes for tagging the various types of library materials.

2.4 Conduct regular conference calls during the period of time the County Library is tagging all collection materials at each of its thirteen (13) branches to obtain updates on tagging completion and to plan for pending deliveries.

2.5 Ship eleven (11) single aisle and seven (7) dual aisle FEIG security gates, one (1) inventory wand and remaining forty-one (41) pre-configured RFID staff stations to the Salida Library located at 4835 Sisk Road, Salida, California, 95368, to arrive two days prior to the installation date. Contact the County Library Virtual Services Manager with the date and approximate time of delivery so arrangements can be made to have County Library Information Technology (IT) staff on site to receive and check in the equipment.

2.6 Confirm County Library has received all gates, inventory and remaining RFID staff stations in good condition.



2.7 Provide an on-site visit for installation and training of all remaining hardware and software.

2.8 Confirm full acceptance for each system installed based on collaboratively developed acceptance criteria.

2.9 Implement a marketing campaign to allay concerns related to privacy and health, and educate and excite the public about the County Library RFID Solution Project. Contractor's Marketing Manager will work with County's communications team to select materials and customize information to best fit County's needs to inform staff, reduce resistance to change, educate the public and create excitement about the benefits of RFID in improving public service and staff efficiency.

3. Phase 3: Project Completion (June 2017\*)

Conduct an RFID Solution Project completion conference call with County Library key personnel to confirm all RFID Solution Project goals and activities have been satisfactorily completed.

*\*Dates are estimates and contingent on the readiness of the County Library and availability of personnel and inventoried hardware for shipping.*

V. County's responsibilities include:

1. County Library key personnel shall participate in conference calls and be available to meet with Contractor during on-site visits.
2. Work collaboratively with Contractor to develop acceptance criteria.
3. Review and approve the integrated design plan, the Statement of Work (SOW),
4. Develop a training schedule and notify staff of training dates and times.
5. Provide the power and connectivity for Radio Frequency Identification (RFID) Solution staff station readers and single aisle and dual aisle security gates.
6. Install tags on all library collection materials and items.
7. Work with Contractor's Marketing Manager on a campaign to inform staff, reduce resistance to change, educate the public and create excitement about the benefits of RFID in improving public service and staff efficiency.

**B. COMPENSATION**

The Contractor shall be compensated for the services provided under this Agreement as follows:

1. Contractor will be compensated on a lump sum basis upon receipt of tags, equipment and software; and the completion of installation as set forth in Exhibit C, which is hereby incorporated by reference and made a part hereof, or as the budget is thereafter amended or obligated.

2. The County shall retain ten (10) percent of all payments made to the Contractor until completion and acceptance of all equipment and software purchases; and installation, project management and training services.

3. The parties hereto acknowledge the maximum amount to be paid by the County for services provided under the term of this Agreement shall not exceed \$325,668.63, including, without limitation, the cost of any subcontractors, consultants, experts or investigators retained by the Contractor to perform or to assist in the performance of its work under this Agreement.

4. Contractor will submit invoices to County. Invoices will be submitted to:

Stanislaus County Library  
Attention: Accounts Payable  
1500 I Street  
Modesto, CA 95354  
[Libraryaccounting@stanlibrary.org](mailto:Libraryaccounting@stanlibrary.org)

**C. TERM**

These services shall commence on December 7, 2016 and continue through June 30, 2018. However, either party may terminate this Agreement by providing a thirty (30) day written notice to the other party. Termination of this Agreement shall not affect County's obligation to pay for all fees earned and reasonable costs necessarily incurred by Contractor, subject to any applicable setoffs.

**D. REPRESENTATIVES**

The parties' respective Project Managers shall be:

**For County:**

John Fleming, Virtual Services Manager  
1500 I Street  
Modesto, CA 95354  
(209) 558-7801  
[jfleming@stancounty.com](mailto:jfleming@stancounty.com)

**For Contractor:**

David Tuttle, Sales Consultant  
2855 Premiere Parkway, Suite A  
Duluth GA, 30097-5201  
(800) 216-8370  
[dtuttle@envisionware.com](mailto:dtuttle@envisionware.com)

## EXHIBIT B

### Insurance Required for Most Contracts

*(Not for Professional Services or Construction Contracts)*

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors.

#### MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than One Million Dollars (\$1,000,000) per incident or occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** If the Contractor or the Contractor's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under the Agreement Insurance Services Office (ISO) Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than One Million Dollars (\$1,000,000) per accident for bodily injury and property damage and transportation related pollution liability.
3. **Workers' Compensation** Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

If the contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

***Application of Excess Liability Coverage:*** Contractors may use a combination of primary, and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

#### ***Other Insurance Provisions***

The insurance policies are to contain, or be endorsed to contain, the following provisions:

***Additional Insured Status***

The County, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used).

***Primary Coverage***

For any claims related to this contract, the Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the County, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, agents or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

***Reporting***

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials, employees, agents or volunteers.

***Notice of Cancellation***

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the County.

***Waiver of Subrogation***

Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

***Self-Insured Retentions***

Self-insured retentions must be declared to and approved by the County. The County may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County.

***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise acceptable to the County.

***Claims Made Policies***

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.

2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

**Verification of Coverage**

Contractor shall furnish the County with a copy of the policy declaration and endorsement page(s), original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All **certificates and endorsements are to be received and approved by the County before work commences**. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**Subcontractors**

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that County is an additional insured on insurance required from subcontractors.

**Special Risks or Circumstances**

County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**Insurance Limits**

The limits of insurance described herein shall not limit the liability of the Contractor and Contractor's officers, employees, agents, representatives or subcontractors. Contractor's obligation to defend, indemnify and hold the County and its officers, officials, employees, agents and volunteers harmless under the provisions of this paragraph is not limited to or restricted by any requirement in the Agreement for Contractor to procure and maintain a policy of insurance.

APPROVED AS TO INSURANCE CONTENT:

Stanislaus County

Chief Executive Office – Risk Management Division

By: Melissa A Parikh

Name: Melissa Parikh

Title: Confidential Assistant III

Date: 11/17/2016

Vendor: EnvisonWare, Inc

**EXHIBIT C**

BUDGET CATEGORY	AMOUNT	TOTAL
<u>2X*GEN RFID tags:</u>		
2 x 3 Tags for all non-disc items 1,500 tags/roll x 425 rolls x \$0.117/tag	74,587.50	
Single full coverage tags for each CD & DVD 1,000 tags/roll x 47 rolls x \$0.44/tag	<u>20,680.00</u>	
Total RFID tags		\$95,267.50
 <u>Equipment, Software and Installation:</u>		
RFID Reader Kits with EnvisionWare RFID Software Suite:		
Staff Station with RFID reader, Feig antenna, cables, and software – 71 @\$885 each	\$62,835.15	
RFID Inventory Wand - 1 @ \$3,644 each	3,644.00	
Mobile APP with Security Station	-0-	
RFID 3-D antenna Security Gates:		
Feig single aisle security gates to read RFID tags and software – 11 @ \$4,499 each	49,489.00	
Feig dual aisle security gates to read RFID tags and software – 7 @ \$6,995 each	48,965.00	
Shipping	4,998.80	
Installation – 4 trips/20 days	<u>20,900.00</u>	
Total RFID Equipment and Installation		\$190,831.95
Training		Included

**EXHIBIT C (Continued)**

BUDGET CATEGORY	AMOUNT	TOTAL
<u>Annual Maintenance:</u>		
Year 1: Warranty period (no annual maintenance due)	\$ -0-	
Years 2 – 5 to be provided under separate agreement		
Total Annual Maintenance		\$0.00
<u>Rental Fees for RFID Tagging Carts:</u>		
Portable Conversion Cart		
10 carts for 3 months @ \$1,350 each	\$13,500.00	
Additional months - 10 carts x \$465/mo x 1 month	<u>4,650.00</u>	
Total RFID Tagging Carts Rental Fees		\$18,150.00
Total Sales Tax		\$21,419.18
Total RFID Solution Project Costs		\$325,668.63

**EXHIBIT D**

**Eula agreement**



**ENVISIONWARE, INC.**

**END USER LICENSE AGREEMENT AND LIMITED WARRANTY ("EULA")**

**IMPORTANT:** PLEASE READ THE TERMS AND CONDITIONS OF THIS EULA CAREFULLY BEFORE USING THE SOFTWARE. ENVISIONWARE, INC. ("ENVISIONWARE") IS WILLING TO LICENSE THE SOFTWARE TO YOU AS THE INDIVIDUAL, THE ORGANIZATION, OR THE LEGAL ENTITY THAT WILL BE UTILIZING THE SOFTWARE (REFERRED TO AS "YOU" OR "YOUR") ONLY ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS OF THIS EULA.

UPON AND AS OF THE DATE ENVISIONWARE SENDS AN EMAIL TO YOU (THE "EFFECTIVE DATE") ISSUING CREDENTIALS TO LOG INTO ENVISIONWARE'S WEBSITE FROM WHERE THE SOFTWARE MAY BE DOWNLOADED, YOU AGREE TO THE TERMS AND CONDITIONS OF THIS EULA.

IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS EULA, DO NOT ATTEMPT TO DOWNLOAD OR INSTALL THE SOFTWARE, OR, IF INSTALLED, MAKE NO FURTHER USE OF THE SOFTWARE, AND NOTIFY IN WRITING ENVISIONWARE OR THE RESELLER FROM WHOM IT WAS ACQUIRED WITHIN THIRTY (30) DAYS OF PURCHASE, AND THE PURCHASE PRICE WILL BE REFUNDED.

**1. License:** The software and documentation (collectively the "Software") are owned by and are the property of EnvisionWare or its licensors and are protected by copyright and other intellectual property laws. Some licensors may be express or intended beneficiaries of this EULA. Subject to all of the terms and conditions of this Agreement, EnvisionWare grants you a limited, non-exclusive, worldwide, non-transferable, non-sublicensable license to use the Software for which you have been issued a Product Key by EnvisionWare or an authorized distributor or reseller, but only in accordance with (i) the documentation, (ii) the restrictions contained herein and any restrictions on the applicable invoice, and (iii) the number of authorized users. Portions of some Software modules are licensed from Artifex Software, Inc. Portions of some modules may contain MySQL connector (pursuant to the GNU GPL v2 license at <http://www.gnu.org/licenses/gpl-2.0.html>). Portions of some modules may contain the MS access driver, licensed from Microsoft Corporation. Portions of some modules may be licensed under the Microsoft Reciprocal License (MS-RL) <http://opensource.org/licenses/ms-rl>. Portions of some Software modules are licensed under the Apache License, Version 2.0; you may not use these files except in compliance with the Apache License. You may obtain a copy of the Apache License at <http://www.apache.org/licenses/LICENSE-2.0>. Unless required by applicable law or agreed to in writing, software distributed under the Apache License is distributed on an "AS IS" BASIS, WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, either express or implied. See the Apache License for the specific language governing permissions and limitations under the Apache License. Portions of some Software modules are licensed under the MIT Expat License. This EULA also incorporates the terms of the Verifone Pass Through Terms of Use attached hereto. This EULA governs any releases, revisions, or enhancements to the Software that EnvisionWare may furnish to you. Your rights and obligations with respect to the use of this Software are as follows:

**A. You may:**

- i. use the Software on the quantity and type of computers indicated on EnvisionWare invoice. You may make that number of copies of the Software licensed to you by EnvisionWare.
- ii. make one copy of the Software for archival purposes, or copy the Software onto the hard disk of your computer and retain the original for archival purposes;
- iii. use the Software on a network, provided that you have a licensed copy of the Software for each computer that can access the Software over that network;
- iv. make printed copies of electronic documentation for your internal use.

**B. You may not:**

- i. transfer, assign, convey, sublicense, rent or lease the Software (or any portion thereof) to another person or entity or unlicensed division, subsidiary, or affiliate (or to anyone other than the entity named as licensee as appearing on the software splash screen), and any transfer in violation hereof shall be of no power or effect;
- ii. distribute, sell, sublicense, rent, lease or use the Software (or any portion thereof) for time sharing, hosting, service provider or like purposes, except as expressly permitted under this Agreement;
- iii. reverse engineer, decompile, disassemble, modify, translate, make any attempt to discover, modify or use the

source code, underlying ideas, algorithms, file formats or programming interfaces of the Software by any means whatsoever (except and only to the extent that applicable law prohibits or restricts reverse engineering restrictions), or create derivative works from the Software (any such modifications shall automatically be owned by EnvisionWare upon creation);

iv. utilize any equipment, device, software, or other means designed to circumvent or remove any form of product key or copy protection used by EnvisionWare in connection with the Software, or use the Software together with any authorization code, product key, serial number, or other copy protection device not supplied by EnvisionWare or through an authorized distributor or reseller;

v. use the Software to develop or facilitate development of a product which is competitive with any EnvisionWare product offerings

vi. post or otherwise publish electronic documentation of the Software for access outside the licensed organization;

vii. use a previous version or copy of the Software after you have installed a replacement set or an upgraded version and, upon upgrading the Software, all copies of the prior version must be uninstalled or rendered unusable;

viii. use a later version of the Software than is provided in the email with the login credentials except as provided under the Software Product Warranty, unless you have purchased maintenance and update service or have otherwise separately acquired the right to use such later version;

ix. remove any product identification, proprietary, copyright or other notices contained in the Software;

x. provide any product key or login information to a third party; or

xi. use the Software or product keys in any manner not expressly authorized by this EULA.

**2. Thirty Day Money Back Guarantee:** If you are the original licensee of the Software and are dissatisfied with it for any reason, and if at any time during the thirty (30) day period following the Effective Date you email EnvisionWare confirming your complete removal and deletion of the complete product and provide a signed statement to EnvisionWare attesting to removal of all software components, then EnvisionWare will provide a full refund, subject to the provisions of the Hardware Return Policy below.

**3. Hardware Return Policy:** Custom printed RFID tags, manufactured, built-to-order or custom-configured Hardware, such as but not limited to, kiosks or sorters, may not be returned or canceled for any reason. Custom items include any item listed in an EnvisionWare quotation, product description or order form as being a custom item, or any item which is modified by EnvisionWare after installation. Standard Hardware products may be accepted for return within ninety (90) days of the date of invoice subject to advance, written approval expressed in the form of an EnvisionWare Return Merchandise Authorization ("RMA"). EnvisionWare, at its sole discretion, may grant the right to return standard Hardware products during this return period. Any such returns are subject to a 20% restocking fee unless EnvisionWare determines that the cause of the return is a result of an error on the part of EnvisionWare, in which case EnvisionWare may waive all or part of the restocking fee. No Hardware product will be accepted for return for ANY reason without a Return Merchandise Authorization issued by EnvisionWare. The RMA number must be clearly displayed on any packaging shipped to EnvisionWare. Products returned without an RMA number on the package will be refused. Any return for any reason, whether for an authorized RMA or for warranty support must be shipped to EnvisionWare freight prepaid. Equipment serviced under warranty will be returned freight prepaid.

#### **4. Limited Warranty:**

**A. Software Product Warranty:** EnvisionWare warrants that the Software as distributed operate in substantial conformity with the documentation (the "Software Product Warranty") for a period of one (1) year from the delivery of the Software to you (the "Software Warranty Period"). This is the sole warranty EnvisionWare provides for all Software supplied by EnvisionWare, unless specifically stated otherwise in EnvisionWare's quotation. EnvisionWare does not warrant that your use of the Software will be uninterrupted or error-free. EnvisionWare's sole liability (and your sole remedy) in the event of a breach of this Product Warranty will be that EnvisionWare will, in EnvisionWare's sole discretion, (A) use commercially reasonable efforts to provide you with an error correction or a work-around which corrects the reported non-conformity or (B) if EnvisionWare determines such remedies to be impracticable within a reasonable period of time, refund the money you paid for the Software being returned. EnvisionWare does not warrant that the Software will meet your requirements or that operation of the Software will be uninterrupted or that the Software will be error-free. EnvisionWare provides Software product

support through the reseller from whom you purchased the Software or directly from EnvisionWare for a period of twelve (12) months from date of delivery of the Software.

**B. Hardware Product Warranty:** EnvisionWare warrants that EnvisionWare-branded hardware as distributed will be free from material defects (the "Hardware Product Warranty") for a period of one (1) year from the date of delivery of the EnvisionWare-brand hardware to you (the "Hardware Warranty Period"). Other Hardware components supplied to you by EnvisionWare that are not manufactured or branded by EnvisionWare are covered by the warranties provided by the product manufacturer. EnvisionWare shall have no obligation with respect to a warranty claim unless notified of such claim within the applicable Software or Hardware Warranty Period. The term "delivery" in this Section 4 means, with respect to Software, the date of invoice, and, with respect to Hardware, "delivery" means the date that the Hardware is delivered to your facility.

**C. Exclusions:** The above warranties shall not apply: (i) if the Software or Hardware is used with hardware or software not specified in the documentation; (ii) if any modifications are made to the Software or Hardware by you or any third party; (iii) to defects in the Software or Hardware that are due to accident, abuse or improper use by you or your contractors; or (iv) to any evaluation version or other Software or Hardware provided on a no-charge or evaluation basis.

**D. THE ABOVE SOFTWARE PRODUCT WARRANTY AND HARDWARE PRODUCT WARRANTY ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, ALL OF WHICH ARE SPECIFICALLY DISCLAIMED. THE SOFTWARE PRODUCT WARRANTY AND THE HARDWARE PRODUCT WARRANTY GIVE YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHER RIGHTS, WHICH VARY FROM STATE TO STATE AND COUNTRY TO COUNTRY.**

**E.** EnvisionWare uses virus protection scanning software to scan the Software prior to installation and to the best of EnvisionWare's knowledge as of the installation date, the Software, when installed, does not contain or otherwise introduce any computer virus or any harmful or destructive code which could damage or harm your computers; however, EnvisionWare cannot guarantee that benign or harmful viruses or other malware will not enter your computers or systems.

#### **5. Personal Information:**

**A.** In the event that your (or your users') use of the Software currently or in the future involves the transmitting, uploading, downloading, storage, management, manipulation or other use of personal information (as defined by the Gramm-Leach-Bliley Act, Payment Card Industry Security Standards Council or other applicable standards or rules relating to electronic transaction processing and personal information, such information referred to herein as "Personal Information"), you agree to the following provisions:

- i. You shall maintain as confidential any Personal Information.
- ii. You covenant that you have, as of the Effective Date become and currently are PCI and HIPAA (as applicable) compliant and shall maintain compliance and/or certification under the PCI (Payment Card Industry), PCI-DSS, HIPAA and other relevant and applicable standards relating to electronic transaction processing and personal healthcare information existing as of the Effective Date and as promulgated thereafter.
- iii. If you are de-certified, have your compliance proof expire or are threatened with de-certification, you shall notify EnvisionWare in writing within ten (10) days of such de-certification or threat thereof.

**B.** EnvisionWare shall use commercially reasonable efforts to maintain all of your Personal Information confidential, but EnvisionWare is not liable for the confidentiality of any Personal Information in the event of unauthorized access, theft or use of such Personal Information, either by you, your users, or third parties.

**C.** The obligations of the parties under this Section 5 shall survive any expiration or termination of this EULA.

#### **6. Data:**

**A. CUSTOMER DATA.** In connection with the Software and any related hardware or services provided by EnvisionWare, EnvisionWare may collect and maintain data and information provided by you, your patrons and users (collectively, "Customer Data"). As between EnvisionWare and you, all Customer Data shall be and remain owned by you and be your property. EnvisionWare shall maintain the aspects of all Customer Data identify an individual as confidential. All third parties authorized by EnvisionWare which may have access to the Customer

Data shall be under obligations of confidentiality to maintain the Customer Data as confidential.

**B. USE OF CUSTOMER DATA.** EnvisionWare shall have the right to use Customer Data in connection with EnvisionWare's business, provided that such data shall be anonymized or aggregated such that Personal Information has been de-identified so that one could not link anonymized information back to a specific individual ("Anonymized Data"). All such Anonymized Data shall be the sole property of EnvisionWare. EnvisionWare may use, disseminate, share, or transfer the Anonymized Data or any portion thereof in any way EnvisionWare chooses.

**C. ENVISIONWARE DATA.** EnvisionWare may also collect data and information in connection with the service that EnvisionWare provides generally (but not including Customer Data) through its services ("EnvisionWare Data"). You acknowledge and consent that the Software may communicate (e.g., via an outbound or inbound call using SSL) with EnvisionWare's servers (which may be hosted by a third party service provider) and support personnel, or vice versa, to communicate diagnostic, event logs, support, licensing, compliance, and other information (which is included in the definition of EnvisionWare Data). Some communication may be done automatically by the Software without your needing to be involved, other communication may be at your initiation (e.g., uploading logs) or initiated by EnvisionWare. All such EnvisionWare Data shall be the sole property of EnvisionWare.

**7. Confidential Information:** Each party agrees that all code, inventions, know-how, business, technical and financial information it obtains ("Receiving Party") from the disclosing party ("Disclosing Party") constitute the confidential property of the Disclosing Party ("Confidential Information"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any software, documentation or technical information provided by EnvisionWare (or its agents), performance information relating to the Software, and the terms of this Agreement shall be deemed Confidential Information of EnvisionWare without any marking or further designation except as such disclosure is required by FOIA requirements. Except as expressly authorized herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information. The Receiving Party's nondisclosure obligation shall not apply to information which the Receiving Party can document: (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (b) is or has become public knowledge through no fault of the Receiving Party; (c) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (d) is independently developed by employees of the Receiving Party who had no access to such information; or (e) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law. In order for any information to be considered Confidential Information under this EULA, the Disclosing Party must label such information in writing as "Confidential" prior to or contemporaneous with disclosure to the Receiving Party. The obligations under this Section 7 shall, with respect to Confidential Information, continue for a period of two (2) years after disclosure and, with respect to any information considered by and treated as a trade secret by the Disclosing Party, continue until the trade secret status has been lost.

#### **8. Indemnification:**

**A. Infringement.** Subject to your compliance with the terms of this EULA, EnvisionWare shall indemnify and hold harmless you and your officers, directors, employees and agents from and against all claims, arising out of any claim by a third party to the extent such claim alleges that the Software (in each case as provided by EnvisionWare) infringes any copyright, U.S. patent right, trade secret right, or other intellectual property right provided, however, that you must comply with the following terms: EnvisionWare must have received from you: (i) prompt written notice of such claim (but in any event notice in sufficient time for EnvisionWare to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of such claim; and (iii) all reasonable necessary cooperation by you. In the event that the Software is, or in EnvisionWare's sole opinion is likely to be, enjoined or subject to a claim due to the type of infringement described in this Section 8, EnvisionWare, at its option and expense, may (a) replace the Software with functionally equivalent non-infringing Software or (b) obtain a license for your continued use of the Software, or, if the foregoing alternatives are not reasonably available to EnvisionWare (c) terminate this Agreement and refund a pro rata amount, as determined by EnvisionWare, of the purchase price of the Software and Hardware. Notwithstanding the above, EnvisionWare shall have no liability for any infringement claim which: (i) pertains to any Software that has been altered or modified without EnvisionWare's prior written approval; (ii) is based on use

of the Software in conjunction with any item not provided by EnvisionWare, unless such use is shown to constitute the infringement when not used in conjunction with the item not provided by EnvisionWare; (iii) pertains to any unauthorized use of the Software; (iv) pertains to an unsupported release of the Software; or, (v) pertains to any Open Source Software or other third party code provided with the Software. THIS SECTION 8 SETS FORTH ENVISIONWARE'S SOLE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

B. EnvisionWare shall indemnify, defend and hold you harmless from any losses (including, but not limited to, damage awards, reasonable attorneys' fees and costs, cost of notification, remediation, and penalties) you incur due to any claim or action directly resulting from any Data Breach of your (or your patrons') Personal Information to the extent that such losses are due to the direct act or omission of EnvisionWare or its representatives, agents or contractors.

C. This Section 8 shall survive any expiration or termination of this EULA.

**9. Disclaimer of and Limitations on Damages:** SOME STATES AND COUNTRIES, INCLUDING MEMBER COUNTRIES OF THE EUROPEAN ECONOMIC AREA, DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE LIMITATION OR EXCLUSION BELOW MAY NOT APPLY TO YOU. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL ENVISIONWARE OR ITS LICENSORS BE LIABLE TO YOU FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS OR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, EXEMPLARY OR SIMILAR DAMAGES, INCLUDING ANY LOST PROFITS ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE OR HARDWARE, EVEN IF ENVISIONWARE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO CASE SHALL ENVISIONWARE'S OR ITS LICENSORS' TOTAL LIABILITY (A) FOR ANY PRODUCTS COVERED UNDER THIS EULA, EXCEED THE PURCHASE PRICE FOR THE SOFTWARE AND HARDWARE OR (B) FOR ANY SERVICES, EXCEED THE FEES PAID BY YOU FOR THE SERVICES (EXCLUDING MAINTENANCE AND SUPPORT SERVICES) WHICH DIRECTLY CAUSED THE DAMAGES ALLEGED. The disclaimers and limitations set forth above in this Section 9 will apply regardless of whether or not you accept the Software or Hardware. The parties agree that the limitations specified in this Section 9 will survive any expiration or termination of this EULA and apply even if any limited remedy specified in this EULA is found to have failed of its essential purpose.

**10. U.S. Government Restricted Rights:** RESTRICTED RIGHTS LEGEND. All EnvisionWare products and documentation are commercial in nature. The Software and software documentation are "Commercial Items", as that term is defined in 48 C.F.R. section 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are defined in 48 C.F.R. section 252.227-7014(a)(5) and 48 C.F.R. section 252.227-7014(a)(1), and used in 48 C.F.R. section 12.212 and 48 C.F.R. section 227.7202, as applicable. Consistent with 48 C.F.R. section 12.212, 48 C.F.R. section 252.227-7015, 48 C.F.R. section 27.7202 through 227.7202-4, 48 C.F.R. section 52.227-14, and other relevant sections of the Code of Federal Regulations, as applicable, EnvisionWare's computer Software and software documentation are licensed to United States Government end users with only those rights as granted to all other end users, according to the terms and conditions contained in this EULA. The manufacturer is EnvisionWare, Inc., 2855 Premiere Parkway, Suite A, Duluth, GA 30097-5201.

**11. Export Compliance:** You acknowledge that the Software is subject to export restrictions by the United States government and import restrictions by certain foreign governments. You shall not, and shall not allow any third-party to, remove or export from the United States or allow the export or re-export of any part of the Software or any direct product thereof: (i) into (or to a national or resident of) any embargoed or terrorist-supporting country; (ii) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (iii) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (iv) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority.

**12. Third-Party Code:** The Software may contain or be provided with components subject to the terms and conditions of "open source" or freeware software licenses ("Open Source Software"). Licenses for open source are identified in Section 1. To the extent required by the license that accompanies the Open Source Software, the terms of such license will apply in lieu of the terms of this EULA with respect to such Open Source Software, including, without limitation, any provisions governing access to source code, modification or

reverse engineering.

**13. Professional Services:** Upon request and agreement between the parties, EnvisionWare may provide consulting, training, installation, development, customization, report creation or other services ("Professional Services"). You may order Professional Services under a Statement of Work ("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 EnvisionWare shall commence work under such SOW. If the parties do not execute a separate SOW, the Services shall be provided as stated on the invoice. You will reimburse EnvisionWare for reasonable travel and lodging expenses as incurred. EnvisionWare shall be deemed the sole owner of any work product created pursuant to the Professional Services, whether created solely by EnvisionWare or jointly with you or your contractors. Subject to your full payment of any and all fees pursuant to the applicable SOW, EnvisionWare grants to you the limited, nontransferable right to use any deliverables (including any documentation, code, Software, training materials or other work product) (collectively referred to as the "Deliverables") delivered as part of the Professional Services solely in connection with your permitted use of the Software, subject to all the same terms and conditions as apply to your Software license (including the restrictions set forth in Section 1B), and subject to any additional terms and conditions provided with the Deliverables.

**14. General:** This EULA is the entire agreement between you and EnvisionWare relating to the license and use of the Software and Hardware. This EULA supersedes all prior EnvisionWare end user license agreements for the Software. This EULA may only be modified by a written document which has been signed by both you and an authorized representative of EnvisionWare. EnvisionWare may terminate this EULA upon your breach of any term contained herein. Upon termination, you shall cease use of, uninstall or render inoperable, and delete destroy all copies of the Software. The disclaimers of warranties and damages and limitations on liability shall survive termination. No provision of any purchase order or other business form employed by you will supersede the terms and conditions of this EULA, and any such document relating to this EULA shall be for administrative purposes only and shall have no legal effect. The parties to this EULA are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

**15. Governing Law; Jurisdiction and Venue:** This Agreement shall be governed by the laws of the State of Georgia and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act, as currently enacted by any jurisdiction or as may be codified or amended from time to time by any jurisdiction.

**16. Software Escrow:** At your request, EnvisionWare is willing to set up and maintain the Software with EnvisionWare's independent U.S. escrow agent and make ongoing escrow deposits for significant updates. You would be responsible for additional fees for this service. Please contact EnvisionWare to for more information and pricing.

**17. Purchase in Australia:** If you purchase Software, Hardware or services from EnvisionWare Pty Ltd or its partners, the laws of South Australia, Australia govern all warranty and service claims. EnvisionWare Pty Ltd is authorized to convey and effect all of the rights expressed in this EULA for its direct and indirect customers.

**18. Contact Us:** Should you have any questions concerning this EULA, or if you desire to contact EnvisionWare for any reason, please email [info@envisionware.com](mailto:info@envisionware.com) or write to: EnvisionWare, Inc., 2855 Premiere Parkway, Suite A, Duluth, GA 30097-5201 USA, unless you purchase from an Asia Pacific country in which case, please write EnvisionWare Pty Ltd, 10 George Street, Stepney, SA 5069 Australia.

Revised Mar 2016 © 2002-2016 EnvisionWare, Inc. All Rights Reserved.

Solely for the purposes of the following Verifone Terms of Use, the following terms shall have their associated meanings. "Agreement" means the Verifone Terms of Use. "BPP" means Verifone's Buyer Protection Program. "Covered Territory" means your location(s). "Customer Agreement" means the EULA. "Payment Gateway" means Verifone's transaction gateway portal which provides transaction routing, online reporting and other tools made available by the portal. "Point Solution" and "Rental Devices" mean the Point Solution hardware and Software manufactured or provided by Verifone and offered by EnvisionWare under the EULA. "Reseller" means EnvisionWare. "Software" means the software accompanying the Point Solutions Rental Devices. "Verifone" means VeriFone, Inc.

#### VERIFONE PASS THROUGH TERMS OF USE

1. The following are Verifone's Pass Through Terms of Use for its Point Solution Rental Device hardware and Software.
2. Each Verifone payment device used with the Point Solution is subject to an initial service term of 36 months (the "Initial Service Term"). Subject to the terms of the Customer Agreement, with respect to a particular Verifone payment device, Verifone shall provide the Point Solution to customer for a service term commencing (A) for Rental Devices (or any other payment devices shipped directly by Verifone), on the date such devices are shipped by Verifone, or (B) for any other payment devices, on the date on which such device is activated on the Payment Gateway, and in any case ending on the earliest of (1) the date on which Reseller removes such device from the Payment Gateway, (2) upon Verifone's ceasing to provide the Point Solution for a payment device, which Verifone shall have the right to do on thirty days' notice to customer following the Initial Service Term for such device, and (3) termination of customer's right to use the Point Solution by Reseller due to breach by customer of the Customer Agreement (the "Service Term"). In addition, in the event Verifone's separate agreement with Reseller terminates or Verifone ceases to offer the Point Solution to its customers generally, Verifone reserves the right to terminate the Service Terms for any or all Verifone payment devices. Upon the termination of the Service Term for a particular Verifone payment device, customer shall cease using the Point Solution for such payment device. In the event that a customer desires to end the Service Term for a payment device, the customer must request that Reseller remove the applicable device from the Payment Gateway on its behalf; Verifone will not be responsible for removing a payment device from the Payment Gateway provided that, notwithstanding customer's earlier request, the Service Term will end on the day Reseller actually removes the device from the Payment Gateway.
3. Subject to the terms of this Agreement and customer's payment of the applicable fees, Verifone hereby grants to customer a limited, non-exclusive, non-transferable, non-sub-licensable right and license, in the Covered Territory during the Service Term for each payment device, to access and use the Point Solution subscribed to hereunder solely for customer's internal business purposes. Notwithstanding the foregoing, Reseller will be responsible for managing and monitoring customer's payment devices on customer's behalf, including with respect to the installation of payment applications and key loading, and customer will not be able to directly manage or monitor its payment devices via the Payment Gateway portal. Verifone may modify the Point Solution from time to time in its reasonable discretion, provided that such modifications shall not materially diminish the functionality thereof. If Reseller fails to pay Verifone for services rendered in accordance with its agreement with Verifone, Verifone reserves the right to withhold customer's access to the Point Solution until such fees are paid in full, and Verifone shall not have any liability to customer for any amounts paid to Reseller and not received by Verifone for such services.
4. Customer shall have no right to market, distribute, sell, assign, pledge, sublicense, lease, deliver or otherwise transfer the Point Solution, or any component thereof, including without limitation the Software, to any third party. Customer shall not reverse engineer, decompile, disassemble, translate, modify, alter or create any derivative works based upon the Software, or determine or attempt to determine any source code, algorithms, methods or techniques embodied in the Software, without the prior express written consent of Verifone. Customer shall not remove from the Rental Devices or the Software, or alter, any of trademarks, trade names, logos, patent or copyright notices, or other notices or markings, or add any other notices or markings to the Rental Devices or the Software, without the prior express written consent of Verifone.
5. Customer acknowledges that the Point Solution (including any related documentation) and any intellectual property rights relating to or residing therein (including any patents, copyrights, trade secrets, trademarks, trade names or mask work rights), including the proprietary electronics, software and technical information of Verifone therein, are proprietary products of Verifone and that ownership of such shall remain with and inure to Verifone. Except for the license rights set forth in this clause 5, customer shall have no right, title or interest therein.
6. Customer grants VeriFone a limited, non-exclusive and irrevocable license during and after the term of this Agreement to follow customer's activity inside of the Point Solution components and to use, share, and disseminate data from customer's activity (including its transactions) on an aggregate and anonymous basis only (such data, "Derived Data"), including for purposes of data analytics and optimizing or otherwise enhancing its products and services. VeriFone will comply with all applicable laws with respect to any use, sharing and dissemination of Derived Data. This clause 6 shall survive any expiration or termination of this Agreement.
7. VERIFONE DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE POINT SOLUTION, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. VERIFONE DOES NOT WARRANT THAT THE POINT SOLUTION, OR ANY COMPONENT THEREOF, WILL MEET THE REQUIREMENTS OF CUSTOMER OR THAT THE OPERATION OF THE POINT SOLUTION, OR ANY COMPONENT THEREOF, WILL BE UNINTERRUPTED OR ENTIRELY ERROR FREE. CUSTOMER ACKNOWLEDGES THAT UNDER NO CIRCUMSTANCES DOES VERIFONE

REPRESENT OR WARRANT THAT ALL ERRORS IN ANY SOFTWARE CAN BE REMEDIED. NO ADVICE OR INFORMATION OBTAINED BY CUSTOMER FROM VERIFONE OR FROM ANY OTHER THIRD PARTY ABOUT THE POINT SOLUTION SHALL CREATE ANY WARRANTY.

8. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE CUSTOMER AGREEMENT: EXCEPT TO THE EXTENT PROHIBITED BY LAW: (A) VERIFONE SHALL HAVE NO LIABILITY TO CUSTOMER OR ANY THIRD PARTY FOR SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF BUSINESS, LOSS OF PROFITS OR REVENUE, GOODWILL OR SAVINGS, DOWNTIME, OR DAMAGE TO, LOSS OF OR REPLACEMENT OF DATA OR TRANSACTIONS, COST OF PROCUREMENT OF SUBSTITUTE SERVICES) RELATING IN ANY MANNER TO THE POINT SOLUTION (WHETHER ARISING FROM CLAIMS BASED IN WARRANTY, CONTRACT, TORT OR OTHERWISE), EVEN IF VERIFONE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM OR DAMAGE; (B) IN ANY CASE, VERIFONE'S ENTIRE LIABILITY RELATING IN ANY MANNER TO THIS AGREEMENT OR THE POINT SOLUTION, REGARDLESS OF THE FORM OR NATURE OF THE CLAIM, SHALL BE LIMITED IN THE AGGREGATE TO THE FEES ACTUALLY RECEIVED BY VERIFONE FROM RESELLER FOR CUSTOMER FOR THE POINT SOLUTION UNDER THE CUSTOMER AGREEMENT DURING THE SIX (6) MONTHS PRIOR TO THE CLAIM ARISING; AND (C) VERIFONE SHALL NOT BE LIABLE FOR ANY CLAIMS OF THIRD PARTIES RELATING TO THE POINT SOLUTION. THE LIMITATIONS ON VERIFONE'S LIABILITY SET FORTH IN CLAUSES "(B)" AND "(C)" OF THIS SECTION SHALL NOT APPLY TO LIABILITY FOR DEATH, PERSONAL INJURY OF A PHYSICAL NATURE OR DAMAGE TO TANGIBLE PROPERTY CAUSED BY VERIFONE'S NEGLIGENCE OR INTENTIONAL MISCONDUCT. THE LIMITATIONS CONTAINED IN CLAUSE 7 ABOVE AND THIS CLAUSE 8 ARE A FUNDAMENTAL PART OF THE BASIS OF VERIFONE'S BARGAIN HEREUNDER, AND VERIFONE WOULD NOT PROVIDE THE POINT SOLUTION TO CUSTOMER ABSENT SUCH LIMITATIONS

9. Customer shall comply with all applicable laws, rules, and regulations in connection with this Agreement, including, but not limited to, export control laws and anti-corruption and anti-bribery laws, rules, and regulations. Customer agrees that if Verifone reasonably believes that customer is in breach of this clause 9, that alone shall be sufficient grounds for further action by Verifone, including, without limitation, cancellation of any orders or denial of future business, without any liability or obligation to customer. In addition, customer hereby indemnifies Verifone and its affiliates, directors, officers and employees for all costs, expenses, damages, claims, charges, penalties, fines and other losses that arise in connection with any breach by customer or customer subsidiaries, owners, officers, directors, employees, partners, subcontractors, agents and representatives of the terms and conditions contained in this clause 9.

10. VERIFONE SHALL BE A THIRD PARTY BENEFICIARY OF THIS AGREEMENT, WITH THE RIGHT TO ENFORCE THE TERMS HEREOF AGAINST CUSTOMER WITH RESPECT TO THE POINT SOLUTION.

11. In the case of any customer agreements that include Rental Devices:

**A. Verifone Property.** The Rental Devices shall remain the property of Verifone. Customer shall have no right, title or interest therein except as a lessee under this Agreement. Customer shall keep all Rental Devices free and clear from all liens, including any direct or indirect charge, encumbrance, lien, security interest, legal process or claim against the Rental Devices. Customer may not assign, hypothecate, sublet, sell, transfer, permit the sale of or part with possession of all or any of the Rental Devices or interest in the Customer Agreement, without Verifone's prior written consent. If customer fails to pay any undisputed fees when due, and fails to cure such failure within ten (10) business days of written notice thereof, Verifone may, at any time thereafter enter, with or without legal process, any premises where any Rental Device may be, and repossess and remove such Rental Device. Customer hereby waives any claim of trespass or right of action for damages by reason of such entry and repossession. In addition, customer shall pay to Verifone any actual additional expenses incurred by Verifone in collection efforts.

**B. Upgrades.** Customer may, commencing on the one year anniversary of the start of the Service Term for a Rental Device, upgrade to a different Rental Device (in which event customer may be subject to an increase in fees based on the new Rental Device subscription fee). For such upgrades, customer shall be required to commit to a new Initial Service Term for such Rental Device and shall be required to return the old Rental Device in accordance with clause (d) below.

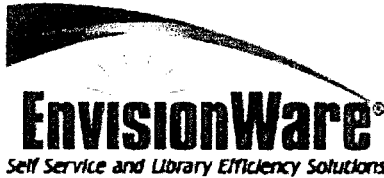
**C. Loss and Damage.** Subject to Verifone's obligation to provide the Services, customer assumes and shall bear the entire risk of loss or damage to the Rental Devices from any use whatsoever from the date of delivery of the Rental Devices to the customer site, until such Rental Devices are returned to Verifone. No loss or damage shall relieve customer from the obligation to make payments hereunder or to comply with any other obligation under the Customer Agreement. In the event of a loss of a Rental Device (but not damage), customer shall immediately notify Reseller thereof. With respect to any lost Rental Device, customer shall be obligated to pay Reseller the Non-Return Fee applicable to such Rental Device. Subject to Verifone's receipt of such Non-Return Fee from Reseller, Verifone shall ship customer a new or refurbished replacement Rental Device. At all times payments for the Point Solution for such Rental Device shall continue in effect.

**D. Return at End of Service Term.** At the end of the Service Term for a Rental Device, customer shall return such Rental Device to Reseller or Verifone, as directed by Reseller. When returning a Rental Device to Verifone a Material Return Authorization number is required. If a Rental Device is not returned to Verifone within thirty (30) days of the end of its Service Term, customer shall be obligated to pay Reseller the Non-Return Fee for such Rental Device. If, upon return of the Rental Device, Verifone determines that the Rental Device requires repair that is not covered by the BPP or Repair Services (e.g., "Out of Scope" or "Limitations"), customer shall be required to pay Reseller for such services at Verifone's standard fees.



**EXHIBIT E**

**EnvisionWare Quotations US-38238 and US-38239**



EnvisionWare, Inc.  
 2855 Premiere Pkwy  
 Suite A  
 Duluth, GA 30097-5201  
 Toll Free: 800.216.8370  
 Voice: +1 678.382.6500

# Quotation

US-38238

11/07/2016

**Bill To**

John Fleming  
 Stanislaus County Library  
 1500 I Street  
 Modesto CA 95354  
 United States

**TOTAL**

**\$158,570.36**

Quote Expires: 02/05/2017

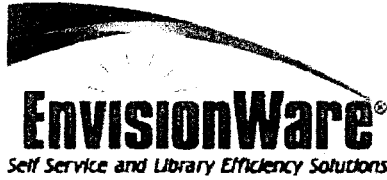
Maintenance Expires 03/31/2017

<b>Federal EIN</b>	<b>Currency</b>	<b>Terms</b>	<b>Sales Rep</b>	<b>Maintenance Expires</b>
58-2424595	US Dollar	Net 30 Days	Tuttle, David B	03/31/2017

<b>Quotation Title</b>	<b>Memo</b>
RFID Contract Final Phase 1	RFP Quote Using Feig Gates and pads

Qty	Item / Description	Ship To	Unit Price	Amount
	<b>020-CONTRACT1</b> *This quotation/order confirmation/invoice is an exhibit of Contract # C011018 *The contract service level is: Platinum *Quoted rates for Professional Services time for future projects or cost overruns is \$150 per hour for customers under maintenance. *Expense day rates are: \$975 for the first day of any week and \$250 for additional days. These rates may apply to requests for extension of days onsite for any project.	1500 I Street		
637,500	<b>RFID-TAG-CU *2x3BL STD</b> RFID TAG - RECTANGULAR - BLANK LABEL - Ultra-Read Rectangular - EnvisionWare Standard, R1 Adhesive, Rolled Out - Antenna: 45x76 mm/1.77x2.99 inches   AL   SLI*x* 1024 bit - Printable Matt paper face - Lifetime Warranty  ** PACKAGE: 4 rolls of 1,500/roll typical **	1500 I Street	\$0.117	\$74,587.50
47,000	<b>RFID-TAG-CU DVDBL</b> RFID TAG -DVD XR - BLANK LABEL - Ultra-Read Advanced Media Tag, R1 Adhesive, Rolled Out Antenna: 110 mm/4.33 inches   AL   SLI*x* 1024 bit - Printable clear face. - Lifetime Warranty*  ** PACKAGE: 3 rolls of 1,000/roll typical **	1500 I Street	\$0.44	\$20,680.00
	<b>Subtotal</b> Subtotal for Item and Disc media tags			\$95,267.50





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 Duluth, GA 30097-5201  
 Toll Free: 800.216.8370  
 Voice: +1 678.382.6500

# Quotation

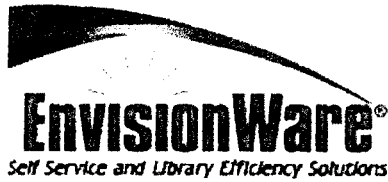
US-38238

11/07/2016

Qty	Item / Description	Ship To	Unit Price	Amount
10	<b>RFID-RENTAL-U Portable Conversion Cart (*Standard)</b> RENTAL FEE - ENVISIONWARE PORTABLE CONVERSION CART Temporary use of EnvisionWare's Portable Conversion Cart for RFID for 3 months. Placing an order for rental means that you have read and understand the Rental Terms and Conditions found here: <a href="http://system.envisionware.com/site/Rental_Terms.html">http://system.envisionware.com/site/Rental_Terms.html</a>  Please send an email to <a href="mailto:sales-us@envisionware.com">sales-us@envisionware.com</a> to confirm your acceptance of the rental equipment terms and conditions.	1500 I Street	\$1,350.00	\$13,500.00
10	<b>RFID-RENTAL-U Portable Conversion Cart (Monthly)</b> 1 MONTH RENTAL FEE - ENVISIONWARE PORTABLE CONVERSION CART Extended temporary use of EnvisionWare's Portable Conversion Cart for RFID after the initial 3-month minimum.	1500 I Street	\$465.00	\$4,650.00
	<b>Subtotal</b>			\$18,150.00
	<i>Subtotal for Tagging Cart Rental</i>			
13	<b>RFID Software Suite-ENT Site License (10)</b> ENVISIONWARE RFID SOFTWARE SUITE ENTERPRISE SITE LICENSE - Tier 10 - 14 Buildings Provides integration with circulation clients, encoding, tag query, and RFID-enabling of ILS-specific self service circulation stations as well as control of the EnvisionWare Media Case Controller ** Integrates with Polaris Staff Client and Express Check using Polaris API ** Integrates with Illi Millcirc and Express Lane using Item Status API ** Integrates with TLC Circulation Client, Amlib, Softlink, Horizon, Symphony, Unicorn, and Evergreen Circulation Client and other ILS circulation clients  ++ RFID Reader Kit sold separately	1500 I Street	\$1,695.00	\$22,035.00
13	<b>RFID-READER-KIT 1-Pad-U</b> ENVISIONWARE 1-Pad RFID READER KIT INTEGRATED high performance ISO standard RFID Reader/Writer/Pad in acrylic black and white enclosure. Surface or under-mount. * Dimensions: 14.8" x 10.87" x 1.06" (376 x 276 x 26.8mm) * Output Power: 1.5W -- 50% more power than earlier designs translates to superior detection. * UNIDIRECTIONAL system detects above the surface of the pad but not to the sides or bottom. Even works on metallic surfaces. * Universal Power supply, 6ft shielded USB Cable, high quality ferrites and installation accessories ++ Requires EnvisionWare RFID Software Suite	1500 I Street	\$574.65	\$7,470.45
	<b>Subtotal</b>			\$29,505.45
	<i>System rfid SW license and rfid readers for all staff stations. Includes RFID readers</i>			



US-38238



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 Duluth, GA 30097-5201  
 Toll Free: 800.216.8370  
 Voice: +1 678.382.6500

# Quotation

US-38238

11/07/2016

Qty	Item / Description	Ship To	Unit Price	Amount
1	<b>PS-PM-BLDG</b> ENVISIONWARE COLLABORATIVE PROJECT SERVICES -- PER BUILDING * Includes installation of all products ordered or guidance to install items as part of a single project/trip on a per building basis. EnvisionWare generally installs management or host components and trains customers in the deployment of Client modules. * A Statement of Work (SOW) will be developed collaboratively which defines the responsibilities of EnvisionWare and your staff and includes consulting services, planning, installation, training and acceptance criteria.  ++ This price does not include any of the fixed travel costs (Continental US) or billed expenses (Outside USA) items when onsite services are requested.		\$1,000.00	\$1,000.00
1	<b>PS-EXPPFF-U 1st Day</b> ENVISIONWARE PROFESSIONAL SERVICES - FLAT FEE FOR EXPENSES - First of Every Five Days Onsite. No partial days.		\$975.00	\$975.00
1	<b>PS-EXPPFF-U Additional Day</b> ENVISIONWARE PROFESSIONAL SERVICES - FLAT FEE FOR EXPENSES - Additional Days After First. Maximum (4) additional days before an additional First day is required.		\$250.00	\$250.00
<b>SUBTOTAL Services</b>				\$2,225.00
SUBTOTAL for EnvisionWare Professional Services				

**Description** 1500 I Street  
 Additional Years Maintenance PAID with the order will receive a 10% Discount per year.

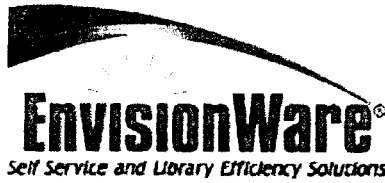
<b>Subtotal</b>	\$145,147.95
<b>Freight</b>	\$2,518.71
<b>Total Tax</b>	\$10,903.70
<b>Total</b>	<b>\$158,570.36</b>

Freight charges are estimated.

Send your purchase order or email confirmation to:  
**EMAIL:** orders@envisionware.com | **FAX:** +1 678.382.6501



US-38238



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 Suite A  
 Duluth, GA 30097-5201  
 Toll Free: 800.216.8370  
 Voice: +1 678 382.6500

# Quotation

US-38239

11/07/2016

**Bill To**

John Fleming  
 Stanislaus County Library  
 1500 I Street  
 Modesto CA 95354  
 United States

**TOTAL**

**\$167,098.27**

Quote Expires: 02/05/2017

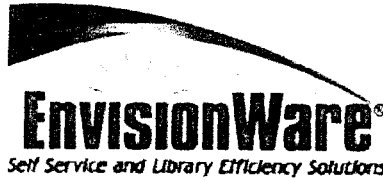
Maintenance Expires 03/31/2017

<b>Federal EIN</b>	<b>Currency</b>	<b>Terms</b>	<b>Sales Rep</b>	<b>Maintenance Expires</b>
58-2424595	US Dollar	Net 30 Days	Tuttle, David B	03/31/2017
<b>Quotation Title</b>			<b>Memo</b>	
RFID Contract Final Phase 2			RFP Quote Using Feig Gates and pads	

Qty	Item / Description	Ship To	Unit Price	Amount
	<b>020-CONTRACT1</b>	1500 I Street		
	<i>*This quotation/order confirmation/invoice is an exhibit of Contract # C011018</i> <i>*The contract service level is: Platinum</i> <i>*Quoted rates for Professional Services time for future projects or cost overruns is \$150 per hour for customers under maintenance.</i> <i>*Expense day rates are: \$975 for the first day of any week and \$250 for additional days. These rates may apply to requests for extension of days onsite for any project.</i>			
58	<b>RFID-READER-KIT 1-Pad-U</b>	1500 I Street	\$574.65	\$33,329.70
	ENVISIONWARE 1-Pad RFID READER KIT INTEGRATED high performance ISO standard RFID Reader/Writer/Pad in acrylic black and white enclosure. Surface or under-mount. <i>* Dimensions: 14.8" x 10.87" x 1.06" (376 x 276 x 26.8mm)</i> <i>* Output Power: 1.5W -- 50% more power than earlier designs translates to superior detection.</i> <i>* UNIDIRECTIONAL system detects above the surface of the pad but not to the sides or bottom. Even works on metallic surfaces.</i> <i>* Universal Power supply, 6ft shielded USB Cable, high quality ferrites and installation accessories</i> ++ Requires EnvisionWare RFID Software Suite			
	<b>Subtotal</b>			\$33,329.70
	System rfid SW license and rfid readers for all staff stations. Includes RFID readers			
1	<b>RFID-READER-WiFi-U</b>	1500 I Street	\$2,495.00	\$2,495.00
	WI-FI RFID BLADE READER/ANTENNA Operates as a Wi-Fi Access Point or in Client mode. Battery operates 8 hours at 1.5w and 4 hours at 4 watts reader power. One of the most powerful handheld readers available. Dimensions: 460 x 260 x 27mm / 18.1 x 10.23 x 1 inches]. The blade is 1.5mm / .06 in thick. 21 ounces including system with battery. ++ Requires RFID Software Suite/Inventory Manager			



US-38239



EnvisionWare, Inc.  
 2855 Premiere Pkwy  
 Suite A  
 Duluth, GA 30097-5201  
 Toll Free: 800.216.8370  
 Voice: +1 678.382.6500

# Quotation

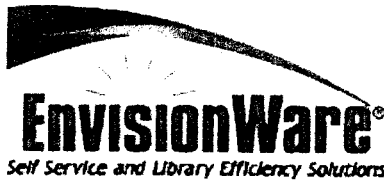
US-38239

11/07/2016

Qty	Item / Description	Ship To	Unit Price	Amount
1	<b>RFID-Tablet10B-U</b> MOBILE TABLET FOR INVENTORY AND STAFF MOBILITY AND OUTREACH 10" Battery operated Mobile Tablet Detachable keyboard Windows 10 (1) USB Connection for optional USB RFID Reader (1) MicroUSB; (1) SD Slot Wi-Fi for Internet, Network and RFID-Wi-Fi Inventory Reader 6.9 x 10.4 x .7 in / 175 x 264 x 17 mm   2.2 lbs / 1kg 4GB RAM / 64GB SSD : Zippered Case INCLUDED SOFTWARE: Inventory Manager and RFID Software Suite	1500 I Street	\$1,149.00	\$1,149.00
	<b>Subtotal</b>			\$3,644.00
	Subtotal Inventory Antenna and Tablet			
11	<b>RFID-GATE 3D-R-U (1-Aisle)</b> TRANSPARENT 3D RFID GATES WITH RADAR PEOPLE COUNTER-1-Aisle (2-Pedestals) - 3D, high accuracy, multi-dimension detection; Transparent Acrylic blends with every decor; auto-tuning; 40-item/second; Visual and Audible alarms plus Ethernet integration to Branch Manager software. Internal radar technology people counter for directional accuracy and auto-gate wake-up. + OPTION: EnvisionWare Branch Manager	1500 I Street	\$4,499.00	\$49,489.00
7	<b>RFID-GATE 3D-R-U (2-Aisle)</b> TRANSPARENT 3D RFID GATES WITH RADAR PEOPLE COUNTER-2-Aisle (3-Pedestals) - 3D, high accuracy, multi-dimension detection; Transparent Acrylic blends with every decor; auto-tuning; 40-item/second; Visual and Audible alarms plus Ethernet integration to Branch Manager software. Internal radar technology people counter for directional accuracy and auto-gate wake-up. + OPTION: EnvisionWare Branch Manager	1500 I Street	\$6,995.00	\$48,965.00
1	<b>EBM-ENT SW</b> ENVISIONWARE BRANCH MANAGER (EBM) - ENTERPRISE EDITION - Gate alerts, people counts for gate radar module, email OneStop receipts and more. + REQUIRED: (1) SIP2 Connection	1500 I Street	\$1,995.00	\$1,995.00
	<b>Discount: *EnvisionWare Products or Services</b>			(\$1,995.00)
	Branch Manager Discount			
	<b>Subtotal</b>			\$98,454.00
	Total for Security Gates and Software			



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US-38239

11/07/2016

Qty	Item / Description	Ship To	Unit Price	Amount
13	<b>PS-PM-BLDG</b> ENVISIONWARE COLLABORATIVE PROJECT SERVICES -- PER BUILDING * Includes installation of all products ordered or guidance to install items as part of a single project/trip on a per building basis. EnvisionWare generally installs management or host components and trains customers in the deployment of Client modules. * A Statement of Work (SOW) will be developed collaboratively which defines the responsibilities of EnvisionWare and your staff and includes consulting services, planning, installation, training and acceptance criteria.  ++ This price does not include any of the fixed travel costs (Continental US) or billed expenses (Outside USA) items when onsite services are requested.		\$1,000.00	\$13,000.00
4	<b>PS-EXPPF-U 1st Day</b> ENVISIONWARE PROFESSIONAL SERVICES - FLAT FEE FOR EXPENSES - First of Every Five Days Onsite. No partial days.		\$975.00	\$3,900.00
14	<b>PS-EXPPF-U Additional Day</b> ENVISIONWARE PROFESSIONAL SERVICES - FLAT FEE FOR EXPENSES - Additional Days After First. Maximum (4) additional days before an additional First day is required.		\$250.00	\$3,500.00
<b>SUBTOTAL Services</b>				\$20,400.00
SUBTOTAL for EnvisionWare Professional Services				
<b>Discount: *EnvisionWare Products or Services</b>				(\$2,013.72)
Shipping (\$388.82) and Staff Station discount (\$0.15)				
<b>Description</b>		1500 I Street		
Additional Years Maintenance Paid with the order will receive a 10% discount per year.				

<b>Subtotal</b>	\$153,813.98
<b>Freight</b>	\$2,891.03
<b>Total Tax</b>	\$10,393.26

**Total \$167,098.27**

Freight charges are estimated.

Send your purchase order or email confirmation to:  
**EMAIL:** orders@envisionware.com | **FAX:** +1 678.382.6501



US-38239

Attachment 2

Budget Journal



Database FMSDBPRD.CO.STANISLAUS.CA.US.PROF  
 Balance Type Budget  
 Data Access Set County of Stanislaus

DO NOT CHANGE  
 DO NOT CHANGE  
 DO NOT CHANGE

Ledger \* List - Text County of Stanislaus

DO NOT CHANGE

Budget List - Text LEGAL BUDGET

DO NOT CHANGE

Category \* List - Text Budget - Upload

DO NOT CHANGE

Source \* List - Text LIB KAR

Currency \* List - Text USD

DO NOT CHANGE

Period List - Text DEC-16

ENTER AS MMM-YY (ALL CAPS FOR MMM) EX: NOV-11

Batch Name Text

Journal Name Text LIB JV#1297 RFID BOS Item

Journal Descripti Text Move appropriations for RFID project

Journal Referenc Text

Organization List - Text Stanislaus Budget Org

DO NOT CHANGE

Chart Of Account Accounting Flexfield

DO NOT CHANGE

Upl	Fund (4 char)	Org (7 char)	Account (5 char)	GL Project (7 char)	Location (6 char)	Misc. (6 char)	Other (5 char)	Debit incr appropriations decr est revenue * Number	Credit decr appropriations incr est revenue * Number	Line Description Text	
Fe	1651	0037203	84310	0000000	000000	000000	00000		272000	Decrease Lib equip & furn	
Fe	1651	0037203	62861	0000000	000000	000000	00000	103000		Increase Computer equip-Non Asset	
Fe	1651	0037203	62980	0000000	000000	000000	00000	129000		Increase Computer equip Asset	
Fe	1651	0037203	63280	0000000	000000	000000	00000	40000		Increase Contracts	
Totals:									272000	272000	

Tip: This is not the end of the Template. Unprotect the sheet and insert as many rows as needed.

Explanation: Move Appropriations from Fixed Assets to Services & Supplies for the RFID project.

Requesting Department Kathleen Rinehart		CEO <i>[Signature]</i>	Date Entry	Auditors Office Only	
Prepared by 4-Nov-16	Supervisor's Approval 12/1/16	Date	Keyed by	Prepared By	Approved By 11/29/16
Date	Date	Date	Date	Date	Date