

MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT ("**Maintenance Agreement**" or "**Agreement**") is made effective as of April 22, 2025 between County of Fresno, through its Sheriff's Office at 2200 Fresno Street, Fresno, CA 93721 ("**County**") and Hitachi Digital Services LLC, office at 2535 Augustine Drive, Santa Clara, California 95054 USA ("**Hitachi**"). The Effective Date shall be April 22, 2025.

County desires to obtain maintenance services for the equipment that makes up its Video Infrastructure Protection Program, as described in County Agreement No. 25-143 ("**VIPP Agreement**").

Hitachi will supply the maintenance services described below ("**Services**") to County with respect to the products described in Section 4 below ("**Equipment**"), which Equipment shall collectively constitute the "System."

NOW THEREFORE, in consideration of the terms of this Maintenance Agreement, the parties agree as follows:

1.0. HITACHI RESPONSIBILITIES

- 1.1. Hitachi agrees, during the Maintenance Term, subject to the other terms of this Maintenance Agreement, to keep and maintain the Equipment in satisfactory operation, as defined by the Sheriff's Office, to make all repairs and adjustments to Equipment, and to supply such parts as may be required which are incidental to the maintenance of the Equipment. Such maintenance shall be provided to the Sheriff's Office at Hitachi's cost at such Equipment's location.
- 1.2. Hitachi shall use commercially reasonable efforts to pass on the benefits of a manufacturer's warranty with regard to Equipment that is in excess of the Maintenance Term but still under the manufacturer warranty. With regard to any Equipment or any part thereof that requires replacement during the Maintenance Term, the Equipment shall be replaced at no additional charge to the County. With respect to defective Hitachi-installed Equipment, Hitachi obligations will be limited to, at its sole option, repairing or replacing such Equipment.
- 1.3. Hitachi will provide access on its web site and/or FTP site to all maintenance updates for software and firmware that is part of the System to the County as soon as practical in the ordinary course of business after commercial release of the same.
- 1.4. Hitachi will provide the County with maintenance updates which, in Hitachi's sole determination, correct application problems that are reasonably likely to prevent substantially full utilization of Hitachi Supplied Product(s).
- 1.5. Hitachi shall offer services for the then-current release of Hitachi Supplied Products. Hitachi will also offer services for the release of Hitachi Supplied Products immediately preceding the then-current release for not less than eight (08) months from the date of such release.
- 1.6. Subject to the limitations and exclusions provided herein, all onsite support for all Hitachi Supplied Products, personnel, engineering and technical resources, and labor and travel

expenses are included, and will be provided by Hitachi during the Maintenance Term.

- 1.7. Hitachi shall provide to the County Zendesk Ticketing System and a support email by which County authorized personnel may request either remote support or on-site service (“Help Desk”). The person taking the support ticket or email shall have the skill-set to answer the County’s technical questions, or have authority to contact a qualified service technician and have him or her respond to the requestor’s ticket or email within four (4) hours of the initial service request. The person responding to the trouble ticket or email shall have the authority to dispatch an on-site service technician to the County at the County’s request. Service issues that are unable to be resolved remotely during the initial ticket or email request, shall be dispatched according to the following defined “Severity” levels. Hitachi repairs will be handled remotely if the problem can be resolved remotely, and if that is necessary, County shall authorize Hitachi to have “Remote Access” to the System. Hitachi repairs will be handled remotely if the problem can be resolved remotely.

E-Mail: videosupport@hitachids.com

- 1.8. If Hitachi determines, in responding to the Sheriff’s Office request for remote support, that the solution is provided in the user guide, Hitachi may direct Sheriff’s Office personnel to the guide for the solution to the problem. If Sheriff’s Office personnel are unable to solve their problem after consulting the user guide, Hitachi support shall promptly assist Sheriff’s Office in resolving the problem.

- 1.9. Hitachi shall provide responses for each severity level as follows:

- a. **Severity Level - Urgent** will be assigned at the County’s discretion This request will be approved by authorized Sheriff’s Office personnel. This requires that, when a support request is made by the Sheriff’s Office authorized personnel, or upon opening a Zendesk service ticket, requesting service, Hitachi shall be on-site at an agreed upon location in the County within four (4) hours of the Sheriff’s Office initial request for service. Onsite service will be scheduled during normal working hours M-F (8AM to 5PM CST). County shall authorize Hitachi to have “Remote Access” to the System. Hitachi repairs will be handled remotely if the problem can be resolved remotely.

- i. Severity Level - Urgent is defined as more than 10% of the System’s cameras being non-operational, or any cameras designated as high priority being non-operational Technicians working on the system will contact the Sheriff’s Office authorized representative when any remote troubleshooting begins, when any onsite visit is scheduled, and when work is completed.

- b. **Severity Level - High** requires that, when a support request is made by the Sheriff’s Office authorized personnel requesting service, Hitachi shall respond on-site at an agreed upon location, excluding weekends and County observed holidays, the next business day Monday - Friday. However, when a request for service is received before 10 AM, service shall be on-site the same business day. Sheriff’s Office shall authorize Hitachi to have “Remote Access” to the video System. Hitachi repairs can be handled remotely if the problem can be resolved remotely.

- i. Severity Level – High is defined as one or more of the System’s cameras being non-operational.

- c. **Severity Level - Normal** requires that when a support request is made by the Sheriff’s Office authorized personnel requesting service, Hitachi shall have a service technician on-site at an agreed upon location Monday – Friday, excluding weekends and County observed holidays within three (3) business days of the County requesting service. County shall authorize Hitachi to have “Remote Access” to the video System. Hitachi repairs can be handled remotely if the problem can be resolved remotely.

- i. Severity Level – Normal is defined as one camera not working that is within a group of cameras at the same location, and/or all non-video streaming and/or PTZ control issues with the System.

1.10. Reporting on all issues, repairs and service tickets. Hitachi shall maintain and present upon request, a log of all system issues, repairs and submitted service tickets from the Sheriff's Office to Hitachi's reporting service.

1.11. Hitachi shall pay for all supplies and consumables, except media, utilized by in the maintenance of the Equipment.

2.0. COUNTY RESPONSIBILITIES

2.1. County shall, as soon as possible, notify Hitachi of any Equipment malfunction requiring maintenance. Notification should be made through the Hitachi Help Desk referenced in Section 1.7 of this Maintenance Agreement.

2.2. Per the Sheriff's Office policies, access to Equipment in order to allow Hitachi to provide maintenance will be prescheduled in advance with authorized Hitachi personnel.

2.3. Provide a Sheriff's Office representative to be present or able to respond if needed while the Equipment is being serviced.

2.4. The County is responsible for any changes in operating systems, network setup, network maintenance and setup and use of any file access control systems.

2.5. The Sheriff's Office shall provide Hitachi with remote access to the System. The remote access will be set up so that Hitachi will have access as needed for troubleshooting and configuration.

2.6. The Sheriff's Office shall ensure that its personnel have sufficient training to attain and maintain competence in the operation of the System software.

2.7. The Sheriff's Office shall make available personnel to Hitachi for training on camera operations and software and storage management system (as appropriate for their role).

2.8. The Sheriff's Office shall provide its personnel access to, and require its personnel to review, the System software user guide before calling Hitachi telephone support. Hitachi shall provide ten copies of the System Software user guide, as well as the appropriate website for online reading.

2.9. County representative shall have the ability to use telephone, e-mail, chat and screen sharing technology for all support incidents, including end-user support. In most cases, the representative will be from the County Sheriff's Office.

2.10. All onsite scheduling of repair work is dependent upon weather, daylight, security factors, and other factors, as determined by a Sheriff's Office Representative.

2.11. If Hitachi determines, in its sole discretion, in responding to the Sheriff's Office request for telephone support, that the solution is provided in the use guide, Hitachi may direct Sheriff's Office personnel to guide for the solution to the problem.

2.12. The Sheriff's Office is responsible for requesting any maintenance term extension. In the event that the Sheriff's Office does not request and pay for a maintenance term extension, Hitachi makes no guarantee that services will be supplied.

3. WARRANTIES

- 3.1. All (i) equipment, (ii) components, (iii) hardware and (iv) software and (v) peripherals installed by Avrio, Hitachi, under County Agreement No. 10-651, as amended, and installed under the VIPP agreement ("Hitachi Supplied Products") will be warranted against material defect for the term described in Section 12 of the VIPP Agreement.
- 3.2. This Maintenance Agreement includes an eight-month full-service on-site service warranty, which shall include service for Hitachi Supplied Products, personnel, engineering and technical resources, labor, and all travel expenses. With respect to defective Hitachi Supplied Products and workmanship, Hitachi obligations will be limited to, at its sole option, repairing or replacing such product.

4.0 PRODUCTS COVERED IN AGREEMENT

This Maintenance Agreement shall cover all the equipment that was installed by Avrio and Hitachi Data Systems under County Agreement No. 10-651, as amended, and all other equipment that was installed by Hitachi ("Existing Equipment"), and the Equipment provided by Hitachi under the VIPP Agreement ("Hitachi Equipment"), which together is the "Equipment".

5.0 EXCLUSIONS FROM COVERED MAINTENANCE

The following labor and services shall be expressly excluded from the Equipment maintenance provisions of Section 1 of this Maintenance Agreement, and shall be subject to Hitachi normal rates as set forth in Section 10 for service and labor:

- 5.1. Services required due to change or alterations subsequent to the date of this Maintenance Agreement in Equipment specifications not performed by Hitachi personnel.
- 5.2. Unauthorized installation, moving, or removing of the Equipment, options, attachments or cables subsequent to the date of this Maintenance Agreement.
- 5.3. Replacement of parts, repair of damage or increase in service time to Equipment resulting from fire, lightning, flood, wind, accident, theft, abuse, neglect, misuse, natural disaster, or any causes other than ordinary use for which the Equipment was intended.
- 5.4. Electrical work external to the Equipment or maintenance of accessories, attachments or other devices not listed on the Equipment list. This is exclusive of work performed by a Hitachi-approved contractor.
- 5.5. Service or repair due to failure of electrical power, air conditioning or humidity control.
- 5.6. Refinishing of Equipment.
- 5.7. Specific requests by the Sheriff's Office for maintenance which are not included in the description contained in Section 1, herein.

6.0 SOFTWARE RELATED PROBLEMS

Hitachi shall provide support for all problems that relate to software included in the Hitachi Supplied Products. Upon a determination by Hitachi engineer that a problem is due to software not related to Hitachi Supplied Products, and thereby excluded from the covered maintenance provisions of this Maintenance Agreement, Hitachi will immediately notify the County, subject to Hitachi's normal rates for service and labor, as set forth in Section 10.

7.0 UNAUTHORIZED SERVICE OF EQUIPMENT

The repair of the Equipment by anyone other than an authorized staff or agent of Hitachi or a Hitachi approved contractor will, at Hitachi's option, be voided to void this Maintenance Agreement. If such unauthorized repair occurs, and Hitachi chooses to void this Maintenance Agreement, then the most recent prepayment made by the County pursuant to Section 10 of this Maintenance Agreement may be forfeited by the County as liquidated damages.

8.0 BREACH OF MAINTENANCE AGREEMENT

8.1. Hitachi's failure to respond within two business days or to repair the Equipment to County's satisfaction after two attempts will, at the Sheriff's Office option, constitute a breach of this Maintenance Agreement, and shall be a reason to terminate this Maintenance Agreement, at County's option. In such an event, the Sheriff's Office may issue a 30-day Notice of Termination to Hitachi, and this Maintenance Agreement shall terminate upon the expiration of 30 days. If such failure to satisfactorily respond or repair occurs, and the Sheriff's Office chooses to terminate this Agreement, then the most recent prepayment made by the County pursuant to this Section 10 of this Agreement shall be returned to the County as liquidated damages within 45 days of the issuance of the Notice of Termination.

8.2. Non-Allocation of Funds – The terms of the Maintenance Agreement and the products and services to be provided hereunder, are contingent on the approval of funds by the appropriating government agency. Should sufficient funds not be allocated, the products and services to be provided may be modified, or this Maintenance Agreement terminated, any time by giving Hitachi thirty (30) days advance written notice.

9.0 TERM AND TERMINATION OF MAINTENANCE AGREEMENT

9.1 This Maintenance Agreement is in effect for a term of one (1) year ("**Term**"), with four possible one-year extensions ("**Maintenance Term**"). During the Term of this Maintenance Agreement, if County is satisfied with the maintenance services, County will provide written notice to Hitachi at least thirty (30) days prior to the anniversary of this Maintenance Agreement that County desires to extend the Term of this Maintenance Agreement by one year. The Sheriff, or his or her designee, has authority to issue such extension notice.

The Sheriff's Office shall request any Term extension at least thirty (30) days prior to the expiration of each annual Term of the Maintenance Agreement. If Sheriff's Office does not request and pay for a maintenance Term extension, this Maintenance Agreement shall terminate.

9.2 This Maintenance Agreement can be terminated by either party by written notice to the other, if the other party (i) breaches of confidentiality, intellectual property or export compliance; (ii) commits material breach of any other terms and does not remedy that breach within thirty (30) days of written notice to do so (iii) becomes or threatens to become Insolvent. If the Maintenance Agreement is terminated, County's right, licenses and privileges under it will terminate and County must comply with Hitachi's request to either remove and destroy all Hitachi IP in County's possession or control or return such material and items to Hitachi at County's cost. Furthermore, County will not be relieved from its payment obligations and any money then currently due to Hitachi will become immediately payable. Neither of parties deemed to have waived any existing rights.

9.3 The terms of this Agreement are contingent on the approval of funds by the appropriating government agency. If sufficient funds are not allocated, then the County, upon at least 30 days' advance written notice to Hitachi, may:

- (A) Modify the services provided by Hitachi under this Agreement via the mutually

agreeable Change Order process; or
(B) Terminate this Agreement.

9.4 Any termination of this Agreement by the County under this Section 9 is without penalty to or further obligation of the County.

10. COMPENSATION

The County shall prepay annual compensation to Hitachi in an amount not to exceed One Hundred Twelve Thousand, Nine Hundred and Thirty-Eight Dollars and Twenty-Four Cents, (\$112,938.24) during the initial one-year Term for the services detailed in this Maintenance Agreement. If additional extensions are added to the term of this Agreement, the County shall prepay annual compensation to Hitachi in an amount not to exceed One Hundred Twelve Thousand, Nine Hundred and Thirty-Eight Dollars and Twenty-Four Cents, (\$112,938.24). This lump sum annual payment shall be paid within forty-five (45) days of the date of invoice. In no event shall the total compensation paid to Hitachi exceed five hundred sixty-four thousand, six hundred ninety-one dollars and twenty cents (\$564,691.20) during the total possible five-year term of this Maintenance Agreement.

Hitachi shall issue the payment invoice to County thirty (30) days prior to the anniversary date of this Maintenance Agreement. The first annual payment shall be paid within forty-five (45) days of execution of this Maintenance Agreement.

Any service and labor charges to service products not otherwise covered under the terms of this Maintenance Agreement (i.e., non-Hitachi Supplied Products and products not covered by Hitachi's warranty or the manufacturer's warranty) shall be charged by Hitachi at the following rates: Mon-Fri \$150.00/hr; Sat, Sun & Holidays \$250.00/hr.

Hours billed after normal working hours (7am-6pm) will be billed at 1.5 times the hourly rate. Travel expenses are additional, and shall be charged as one way travel time at normal hourly rates.

All maintenance charges are exclusive of applicable federal, state or local taxes. Federal excise taxes, State taxes, or the County sales taxes must not be included in the invoiced amount. The County will furnish a tax exemption certificate upon request.

11.0 INDEMNIFICATION

- A. Contractor's Indemnification: Hitachi agrees to indemnify, save, hold harmless and at County's request, defend the County, its officers, agents, and employees from any and all costs and expenses (including attorney's fees and cost), damages, liabilities, claims, and losses occurring or resulting to County in connection with the performance, or failure to perform, by Hitachi, its officers, agents, or employees under this Maintenance Agreement, and for any and all costs and expenses (including attorney's fees and cost), damages liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the performance, or failure to perform, of Hitachi, its officers, agents, or employees under this Maintenance Agreement.
- B. Contractor's Indemnification Exclusions: Hitachi will not be liable to provide any of the remedies in Section 11(A) for any claims related to the Maintenance Agreement that County has, or any person on County's behalf has: (a) used in an unauthorized manner; (b) modified without the express written consent of Hitachi; (c) failed to use another version that has been made available to County and which would have avoided the infringement.

12.0 INSURANCE

Hitachi, at its sole expense, shall maintain in full force and effect, the following insurance policies or a program of self-insurance, including but not limited to, an insurance pooling arrangement or Joint Powers Agreement (JPA) throughout the term of the Agreement:

12.1 Commercial General Liability

Commercial general liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000). This policy must be issued on a per occurrence basis. Coverage must include products, completed operations, property damage, bodily injury, personal injury, and advertising injury. The Contractor shall obtain an endorsement to this policy naming the County of Fresno, its officers, agents, employees, and volunteers, individually and collectively, as additional insureds, but only insofar as the operations under this Agreement are concerned. Such coverage for additional insureds will apply as primary insurance and any other insurance, or self-insurance, maintained by the County is excess only and not contributing with insurance provided under the Contractor's policy.

12.2 Automobile Liability

Automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for property damages. Coverage must include any auto used in connection with this Agreement.

12.3 Worker's Compensation

Workers compensation insurance as required by the laws of the State of California with statutory limits.

12.4 Employer's Liability

Employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for disease.

12.5 Technology Professional Liability (Errors and Omissions)

Technology professional liability (errors and omissions) insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and in the aggregate. Coverage must encompass all of the Contractor's obligations under this Agreement, including but not limited to claims involving Cyber Risks.

12.6 Cyber Liability

Cyber liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence. Coverage must include claims involving Cyber Risks. The cyber liability policy must be endorsed to cover the full replacement value of damage to, alteration of, loss of, or destruction of intangible property (including but not limited to information or data) that is in the care, custody, or control of the Contractor.

Definition of Cyber Risks. "Cyber Risks" include but are not limited to (i) Security Breach, which may include Disclosure of Personal Information to an Unauthorized Third Party; (ii) data breach; (iii) system failure; (iv) data recovery; (v) failure to timely disclose data breach or Security Breach; (vi) failure to comply with privacy policy; (vii) payment card liabilities

and costs; (viii) infringement of intellectual property, including but not limited to infringement of copyright, trademark, and trade dress; (ix) invasion of privacy, including release of private information; (x) information theft; (xi) damage to or destruction or alteration of electronic information; (xii) cyber extortion; (xiii) extortion related to the Contractor's obligations under this Agreement regarding electronic information, including Personal Information; (xiv) fraudulent instruction; (xv) funds transfer fraud; (xvi) telephone fraud; (xvii) network security; (xviii) data breach response costs, including Security Breach response costs; (xix) regulatory fines and penalties related to the Contractor's obligations under this Agreement regarding electronic information, including Personal Information; and (xx) credit monitoring expenses.

If the Contractor is a governmental entity, it may satisfy the policy requirements above through a program of self-insurance, including an insurance pooling arrangement or joint exercise of powers agreement.

12.7 Additional Requirements Relating to Insurance

(A) Verification of Coverage. Within 30 days after the Contractor signs this Agreement, and at any time during the term of this Agreement as requested by the County, the Contractor shall deliver, or cause its broker or producer to deliver, to the County of Fresno, at 2200 Fresno Street, Fresno, California 93721, or Sheriff.Contracts@fresnosheriff.org, and by mail or email to the Project Manager to receive notices pursuant to Section 12.15 under this Agreement, certificates of insurance and endorsements for all of the coverages required under this Agreement.

- (i) Each insurance certificate must state that: The Contractor has waived its right to recover from the County, its officers, agents, employees, and volunteers any amounts paid under any insurance policy required by this Agreement and that waiver does not invalidate the insurance policy.
- (ii) The commercial general liability insurance certificate must also state, and include an endorsement, that the County of Fresno, its officers, agents, employees, and volunteers, individually and collectively, are additional insureds insofar as the operations under this Agreement are concerned. The commercial general liability insurance certificate must also state that the coverage shall apply as primary insurance and any other insurance, or self-insurance, maintained by the County shall be excess only and not contributing with insurance provided under the Contractor's policy.
- (iii) The automobile liability insurance certificate must state that the policy covers any auto used in connection with this Agreement.
- (iv) The technology professional liability insurance certificate must also state that coverage encompasses all of the Contractor's obligations under this Agreement, including but not limited to claims involving Cyber Risks, as that term is defined in this Agreement.
- (v) The cyber liability insurance certificate must also state that it is endorsed, and include an endorsement, to cover the full replacement value of damage to, alteration of, loss of, or destruction of data that is in the care, custody, or control of the Contractor.

(B) Acceptability of Insurers. All insurance policies required under this Agreement must be issued by admitted insurers licensed to do business in the State of California and

possessing at all times during the term of this Agreement an A.M. Best, Inc. rating of no less than A: VII.

- (C) Notice of Cancellation or Change. For each insurance policy required under this Agreement, the Contractor shall provide to the County, or ensure that the policy requires the insurer to provide to the County, written notice of any cancellation or change in the policy according to policy provisions.
- (D) Waiver of Subrogation. The Contractor waives any right to recover from the County, its officers, agents, employees, and volunteers any amounts paid under the policy of worker's compensation insurance required by this Agreement. The Contractor is solely responsible to obtain any policy endorsement that may be necessary to accomplish that waiver, but the Contractor's waiver of subrogation under this paragraph is effective whether or not the Contractor obtains such an endorsement.
- (E) County's Remedy for Contractor's Failure to Maintain. If the Contractor fails to keep in effect at all times any insurance coverage required under this Agreement, the County may, in addition to any other remedies it may have, suspend or terminate this Agreement upon the occurrence of that failure, or purchase such insurance coverage, and charge the cost of that coverage to the Contractor. The County may offset such charges against any amounts owed by the County to the Contractor under this Agreement.
- (F) Subcontractors. The Contractor shall require and verify that all subcontractors used by the Contractor to provide services under this Agreement maintain insurance substantially similar to those insurance requirements provided in this Agreement. This paragraph does not authorize the Contractor to provide services under this Agreement using subcontractors.

12.8 In the event Hitachi fails to keep in effect at all times insurance coverage as herein provided, the County may, in addition to other remedies it may have, suspend or terminate this Agreement upon the occurrence of such event.

12.9 All policies shall be issued by admitted insurers licensed to do business in the State of California, and such insurance shall be purchased from companies possessing a current A.M. Best, Inc. rating of A FSC VII or better.

12.10 LIMITATION OF LIABILITY

- A. Uncapped Liability – Each party acknowledges the full extent of its own liability to the other party for all losses arising from the following areas of liability: (a) death or personal injury resulting from negligent acts or omissions; (b) claims for non-payment; (c) the non-excludable statutory rights of consumers (for example, under laws providing for strict product liability); (d) any infringement of Hitachi IP including any Software license breaches; (e) breaches of confidentiality obligations; (f) fraud or deceit under this Maintenance Agreement.
- B. Limits and Exclusions of Liability – (a) Subject to the other parts of this Section 12, to the extent permitted by applicable law:
 - i. Each Party's maximum and aggregate liability arising out of or in connections with this Maintenance Agreement in general will not exceed the greater of (A) the total fees County has paid to Hitachi under this Maintenance Agreement during the twelve (12) month period immediately before the date of the first event that gave rise to the claim: and (B) Five Hundred Thousand US Dollars (\$500,000); and
 - ii. Neither Party will be liable in any circumstances for : (i) any indirect, punitive, special, incidental or consequential damages in connection with or arising out of

- this Maintenance Agreement or (ii) whether direct or indirect, for loss of actual or anticipated business, revenue, profit, savings, goodwill, loss of use, lost or corrupted data lost or corrupted data, electronically transmitted order, or loss of other economic advantage.
- iii. The limitations and exclusions of liability in Sections 12(B) above, apply whether such liabilities or claims arise under breach of contract (including anticipatory breach or repudiation), tort (including negligence), statutory duty or otherwise (including in equity or common law) and even if the liable party has previously been advised of the possibility of such damages. Liability for damages will be limited and excluded, even if an exclusive remedy provided for this Maintenance Agreement fails of its essential purpose.

12.11 CONFIDENTIAL INFORMATION

A. Obligations

- i. Each Party will (i) maintain the confidentiality of the other Party's Confidential information that is disclosed to it, by using the same degree of care that it uses to protect its own Confidential Information, and in any event, a reasonable degree of care; (ii) only use that Confidential Information for purposes related to this Maintenance Agreement; and (iii) not disclose the other Party's Confidential Information to a third party without the other Party's prior written consent.
- ii. Each Party may disclose the other Party's Confidential Information to its personnel and/or Affiliates who need to know the information in order to perform that Party's obligation under this Maintenance Agreement, provided that party takes all reasonable steps to ensure compliance with its confidentiality obligations including, where necessary, to execute a written confidentiality agreement containing terms that are no less restrictive than those in this section 12.11. The receiving Party will be fully responsible for any confidentiality breach caused by its personnel or its affiliates.
- iii. If a Party has a legal requirement to disclose Confidential Information of the other Party, that Party will, if permitted by applicable law, provide the other Party with prompt prior written notice of this, so that the other Party may seek a protective order or other limitation on disclosure. If a legal requirement to disclose any Confidential Information nonetheless remains on the Party, it may disclose that portion of the Confidential Information that it is legally required to, without violation of this Maintenance Agreement, but it will exercise commercially reasonable efforts to minimize the disclosure, such as by redaction and to obtain assurances that such Confidential Information will be treated confidentially.

B. Return or Destruction

- i. Except to the extent otherwise allowed in this Maintenance Agreement and subject to Section 12.11A, each Party will: (i) securely and promptly destroy the other Party's Confidential Information that is in its possession or control, together with all copies that have been made, upon the termination of this Maintenance Agreement otherwise, at the other Party's requested and (ii) promptly provide the other Party with written certification when it is done. Notwithstanding the foregoing, County may retain a copy of Hitachi's IP as necessary to exercise any license rights granted to County pursuant to this Maintenance Agreement. This Section 12.11 will survive the termination of this Maintenance Agreement, with respect to the retained copy of Hitachi's IP.
- ii. Where it is not technically possible or practicable for a receiving Party

to access and destroy Confidential Information stored in an automatic electronic archiving system, the receiving Party will cease to use that Confidential Information and ensure that it is kept secure for the period of retention, until it is eventually overwritten.

C. Equitable Relief

- i. Each Party agrees and acknowledge that a breach of this section 12.11 will cause the disclosing Party irreparable damage for which remedies other than injunctive relief will be inadequate, and agrees that the disclosing Party will request injunctive or other equitable relief seeking to restrain such use or disclosure, without limitation or waiver of any other remedy available at law or in equity.

12.12 FORCE MAJEURE

Hitachi shall not be liable to the County for any delay or failure by Hitachi to perform its obligations under this Maintenance Agreement if such delay or failure arises from any cause(s) beyond the reasonable control of Hitachi, including third party labor disputes, third party strikes, other third party labor or industrial disturbances, act of God, floods, lightning, earthquakes, unforeseen shortages of materials, rationing, utility or communication failures, casualty, war, acts of public enemy, riots, insurrections, embargoes, blockages, actions, restrictions, new or changed regulations, or orders of any governmental agency or subdivision thereof.

12.14 GOVERNING LAW

Venue for any action arising out of or related to this Agreement shall only be in Fresno, California.

The rights and obligations of the parties and all interpretation and performance of this Agreement shall be governed in all respects by the laws of the State of California.

12.15 NOTICES

The persons and their addresses having authority to give and receive notices under this Agreement include the following:

For the County:
County of Fresno
Attention: Project Manager
2200 Fresno Street
Fresno, CA 93721

For Hitachi:
Hitachi Digital Services LLC
2535 Augustine Drive
Santa Clara, CA 95054

All notices between the County and Hitachi provided for or permitted under this Agreement must be in writing and delivered either by personal service, by first-class United States mail, by an overnight commercial courier service, or by telephonic facsimile transmission. A notice delivered by personal service is effective upon service to the recipient. A notice delivered by first-class United States mail is effective three County business days after deposit in the United States mail, postage prepaid, addressed to the recipient. A notice delivered by an overnight commercial courier service is effective one County business day after deposit with the overnight commercial courier service, delivery fees prepaid, with delivery instructions given for next day delivery, addressed to the recipient. A notice delivered by telephonic facsimile is effective when transmission to the recipient is completed (but, if such transmission is completed outside of County business hours, then such delivery shall be deemed to be effective at the next beginning of a County business day), provided that the sender maintains a machine record of the completed

transmission. For all claims arising out of or related to this Maintenance Agreement, nothing in this section establishes, waives, or modifies any claims presentation requirements or procedures provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

13.0 AUDITS AND INSPECTIONS

Hitachi shall at any time during business hours, and as often as the County may deem necessary, make available to the County for examination all of its records and data with respect to the matters covered by this Maintenance Agreement. Hitachi shall, upon request by the County, permit the County to audit and inspect all of such records and data necessary to ensure Hitachi's compliance with the terms of this Maintenance Agreement.

If this Maintenance Agreement exceeds ten thousand dollars (\$10,000.00), Hitachi shall be subject to the examination and audit of the California State Auditor for a period of three (3) years after final payment under contract (Government Code Section 8546.7) subject to the term noted above.

14.0 MODIFICATION

Any matters of this Maintenance Agreement may be modified from time to time by the written consent of all the parties without, in any way, affecting the remainder.

15.0 NON ASSIGNMENT

Neither party shall assign, transfer or subcontract this Maintenance Agreement nor their rights or duties under this Maintenance Agreement without the prior written consent of the other party. Notwithstanding the previous sentence Hitachi may freely assign this Agreement without the consent of County if there is a change of control of Hitachi in connection with a bona fide solvent intra group reorganization of Hitachi.

16.0 INDEPENDENT CONTRACTOR

In performance of the work, duties and obligations assumed by Hitachi under this Maintenance Agreement, it is mutually understood and agreed that Hitachi, including any and all of the Hitachi's officers, agents, and employees will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of the County. Furthermore, County shall have no right to control or supervise or direct the manner or method by which Hitachi shall perform its work and function. However, COUNTY shall retain the right to administer this Maintenance Agreement so as to verify that Hitachi is performing its obligations in accordance with the terms and conditions thereof.

Hitachi and County shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

Because of its status as an independent contractor, Hitachi shall have absolutely no right to employment rights and benefits available to County employees. Hitachi shall be solely liable and responsible for providing to, or on behalf of, its employees all legally required employee benefits. In addition, Hitachi shall be solely responsible and save County harmless from all matters relating to payment of Hitachi's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Maintenance Agreement, Hitachi may be providing services to others unrelated to the County or to this Maintenance Agreement.

17.0 ELECTRONIC SIGNATURE

The Parties agree that this Maintenance Agreement may be executed by electronic signature as provided in this section. An "electronic signature" means any symbol or process intended by an individual signing this Maintenance Agreement to represent their signature, including but not limited to (1) a digital signature; (2) a faxed version of an original handwritten signature; or (3) an electronically scanned and transmitted (for example by PDF document) of a handwritten signature. Each electronic signature affixed or attached to this Maintenance Agreement (1) is deemed equivalent to a valid original handwritten signature of the person signing this Maintenance Agreement for all purposes, including but not limited to evidentiary proof in any administrative or judicial proceeding, and (2) has the same force and effect as the valid original handwritten signature of that person. The provisions of this section satisfy the requirements of Civil Code section 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3, Part 2, Title 2.5, beginning with section 1633.1). Each party using a digital signature represents that it has undertaken and satisfied the requirements of Government Code section 16.5, subdivision (a), paragraphs (1) through (5), and agrees that each other party may rely upon that representation. This Maintenance Agreement is not conditioned upon the parties conducting the transactions under it by electronic means and either party may sign this Maintenance Agreement with an original handwritten signature.

18.0 ENTIRE AGREEMENT

This Maintenance Agreement constitutes the entire agreement between Hitachi and County with respect to the subject matter hereof and supersedes all previous Maintenance Agreement negotiations, proposals, commitments, writings, advertisements, publications, and understanding of any nature whatsoever unless expressly included in this Maintenance Agreement.

IN WITNESS WHEREOF each of the parties has executed this Maintenance Agreement on the date first shown above.

HITACHI DIGITAL SERVICES, LLC

Kristie Gough
Kristie Gough

Finance Controller Professional Services
(Authorized Signing Authority)
Revenue Performance analyst

1/4/2024

3/17/2025

COUNTY OF FRESNO

Ernest Buddy Mendes
Ernest Buddy Mendes, Chairman of the Board of
Supervisors of the County of Fresno

Attest:

Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By: *Alexandra Vain*
Deputy

Accounting String:
Account: 7205
Fund: 0001
Org: 31116396
Program: 0
Subclass: 10000