

**Marin Community College District
Long Form Equipment & Services
Contract**

COLLEGE OF MARIN USE ONLY	
Vendor Name	_____
Vendor No.	_____ Agreement No. _____
Account Number	_____
Amount	_____ Retention _____
Budget Manager	_____

This LONG FORM EQUIPMENT AND SERVICES CONTRACT ("Contract") is made as of August 16, 2017 and is by and between the Marin Community College District ("District") and SecureAll("Vendor").

RECITALS

WHEREAS, the District requires specialized equipment and services that are not available within the District, and cannot be provided and delivered and performed by District employees; and

WHEREAS, the District desires to obtain specialized equipment and services as described in Exhibit A, attached hereto and incorporated herein by this reference; and

WHEREAS, the District has a "piggy back" provision that allows all California Community Colleges, UC System Universities, CSU (California State Universities), K-12 District, and other public agencies to purchase equipment and services utilizing this contract; and

WHEREAS, Vendor is qualified in all respects to provide the equipment and services to the District contemplated by this Contract and, to the extent required by any applicable laws, Vendor has all such licenses and/or government approvals as would be required to carry out and perform for the benefit of the District this Contract; and

WHEREAS, Vendor, in providing the equipment and services and in otherwise carrying out its obligations to the District under this Contract, shall, at all times, comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including workers' compensation and equal protection and non-discrimination laws; and

NOW THEREFORE, the District and Vendor to this Contract do hereby mutually agree as follows:

1. **Budget and Fiscal Provision.** This Contract is subject to the budget and fiscal policies, regulations, and practices of the District. The amount of the District's obligation hereunder shall not at any time exceed the amount herein stated. The District has no obligation to renew this Contract after expiration of its term.
2. **Term of the Contract.** This Contract shall become effective beginning August 16, 2017 and shall terminate on August 15, 2020. MCCD reserves the right to extend this contract in to (2) one (1) increments but not to exceed sixty (60) months).
3. **Services Vendor Agrees to Perform.** Vendor agrees to perform the Services in accordance with the terms of this Contract. The Services to be performed by the Vendor will be performed in a timely, professional and workman-like manner in accordance with industry standards, and with a degree of care, skill and expertise as is required for the provision of services of a similar nature.
4. **Compensation.** The Vendor shall be paid for the amount not-to-exceed amount of thirty million dollars (\$30,000,000.00) This is inclusive of all services and equipment purchased by MCCD and any other party that purchases equipment or services using the piggy back language of the RFP. Payments shall be made within thirty (30) days upon delivery and acceptance of the Equipment by District or approval that Services have been rendered in a professional and timely manner. The amount of money to be paid to the Vendor under this Contract shall not exceed thirty million (\$30,000,000.00). If the scope of work described herein is

increased or revised, the Contract amount may also be increased provided that there is a prior written modification to the Contract. It shall be the responsibility of the Vendor to ensure that the total approved amount of the Contract is not exceeded. Any work performed in excess of said amount shall not be compensated.

5. **Termination.** It is expressly understood and agreed that in the event the Vendor or the District fails to perform its obligations under this Contract, this Contract shall be terminated and all the Vendor's and District's rights hereunder ended. Termination shall be upon thirty (30) days written notice to the defaulting party, and no work will be undertaken by Vendor after receipt of the notice. In the event this Contract is terminated by the District pursuant to this paragraph; the Vendor shall be paid for services performed up to the date of termination. It is further understood and agreed that the District may terminate this Contract for the District's convenience and without cause at any time by giving the Vendor thirty (30) days written notice of such termination. In such an instance, the Vendor shall be entitled to compensation for services performed up to the effective date of termination. Upon receipt of written notice that this Contract is terminated, the Vendor will submit an invoice to the District for an amount that represents the value of services actually performed up to the date of termination for which the Vendor has not previously been compensated as per paragraph 4 above. Upon approval and payment of this invoice by the District, the District shall be under no further obligation to the Vendor, monetarily or otherwise.
6. **Independent Vendor.** The Vendor shall be deemed at all times to be an independent vendor and shall be wholly responsible for the manner in which it performs the services required of him or her pursuant to the terms of this Contract. The Vendor shall be liable for any act or acts of its own, or its agents or employees, and nothing contained herein shall be construed as creating the relationship of employer and employee between the District and the Vendor or its agents and employees. The Vendor shall also complete and file with the District a W-9 form.
7. **Modification Of Contract.** The parties may amend this Contract in writing by mutual consent. Changes, including any increase or decrease in the amount of the Vendor's compensation, shall only be effective upon the execution of a duly authorized written amendment to this Contract.
8. **Subcontracting/Assigning.** The Vendor is prohibited from subcontracting or assigning this Contract without the prior written consent of the District in its sole discretion. A violation of this provision shall confer no rights on any party and shall be void.
9. **Vendor's Default.** Failure or refusal of the Vendor to perform or do any act herein required shall constitute default. In the event of any default, in addition to any other remedy available to the District, the District may terminate this Contract pursuant to the terms of Section 5 herein. Such a termination shall not waive any other legal remedies available to the District.
10. **Contract Made in California.** This Contract shall be deemed to be executed in, and shall be construed in accordance with, the laws of the State of California.
11. **Indemnification.** With respect to the [Equipment to be delivered] [the Services to be provided] under this Contract, the Vendor shall indemnify and hold harmless the District, agents, and employees from and against any and all actions, claims, damages and losses, including attorney's fees that may arise out of Vendor's negligent acts, errors, or omissions caused by the Vendor. This indemnification obligation is not limited in any way or by any limitation on the amount or type of damages or compensation payable to Vendor or its agents and employees under applicable policies of insurance, workers' compensation acts, disability benefits acts, or other employees, benefits acts. This indemnification obligation survives the performance of services under this Contract or any termination under the provisions of this Contract.
12. **Insurance.** The Vendor shall procure and maintain during the term of this Contract the following insurance:

- a. **General Liability Insurance.** Vendor, at Vendor's sole cost and expense, shall maintain at all times during the life of this Contract: (1) personal injury and property damage insurance for all activities of Vendor arising out of or in connection with this contract, written on a comprehensive or commercial general liability form, in an amount no less than \$1,000,000.00 combined single limit personal injury and property damage for each occurrence in an annual aggregate of no less than \$1,000,000.00 or as may be agreed upon between District and Vendor and (2) comprehensive or business owners automobile liability insurance in an amount no less than \$1,000,000.00 combined single limit for bodily injury and property damage, including owned and non-owned and hired auto coverage, as applicable, for each occurrence in an annual aggregate of no less than \$1,000,000.00 or as may be agreed upon between District and Vendor. Such insurance must be written by an admitted company or companies licensed to do business in the State of California at the time the policy is issued, and acceptable to District.
- b. **Workers' Compensation Insurance.** Vendor and all consultants, and sub-consultants Vendor intends to employ shall maintain, for the period covered by this Contract, workers' compensation insurance as required by California law, with an insurance carrier satisfactory to District, for all persons whom they may employ in carrying out the work contemplated under this Contract. In the event Vendor is self-insured, Vendor shall furnish a valid Certificate of Permission to Self-Insure, signed by the Department of Industrial Relations Administration of Self-Insurance, Sacramento, California. The policies represented by the certificates must contain the provision (and the certificates must so state) that the insurance cannot be canceled until thirty (30) days after written notice of intended revocation has been given to District.
- c. **Endorsements.** The general liability coverage specified above shall be endorsed with the following specific (or equivalent) language:
- (1) The District is named as additional insured for all liability arising out of the operations by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents and employees against liability for bodily injuries, deaths or property damage or destruction arising in any respect directly or indirectly in the performance of the Contract.
 - (2) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured and the coverage afforded shall apply as though separate policies have been issued to each insured.
 - (3) The insurance provided herein is primary and no insurance held or owned by District shall be called upon to contribute to a loss.
 - (4) Coverage provided by this policy shall not be canceled or the dollar amount reduced without thirty (30) days written notice given to District.
- d. **Documentation.** Prior to execution of this Contract, Vendor must submit for to the District Representative for District approval, certificates of insurance showing the limits of insurance provided and signed copies of the specified endorsements for each policy. At the time of making application for an extension of time, Vendor shall submit evidence that the insurance policies will be in effect during the requested additional period of time.
- e. **District Placement of Insurance; Waiver of Subrogation.** If Vendor fails to maintain the required insurance, District may take out insurance to cover any damages for which District might be held liable on account of Vendor's failure to pay such damages or to provide the required insurance coverage, and deduct and retain the amount of the premiums from any sums due Vendor under the Contract. Nothing herein contained shall be construed as limiting in any way the extent to which Vendor or any Vendor's employees, agents, or consultants may be held responsible for payment of

damages resulting from its operations. All insurance required under this section shall contain a waiver of subrogation if available.

13. **Non-Discrimination.** Vendor agrees that it shall not discriminate on the basis of sex, race, religious creed, national origin, age, marital status, sexual orientation, gender identity, AIDS/ARC/HIV status, or disability, in its performance under this Contract. Vendor acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services, and other activities provided by a public entity to the public, whether directly or through a vendor, must be accessible to persons with disabilities. Vendor agrees not to discriminate against persons with disabilities in the provision of services, products, benefits, or activities provided in this Contract.
14. **Criminal Background Checks.** Vendor agrees to comply with Education Code Section 45125.1, *et seq.* concerning fingerprinting employees and conducting criminal background checks through the California Department of Justice. The District is extending this requirement to all types of Vendors if they are deemed to have more than limited contact with District students. The Vendor shall assume all expenses associated with these background checks and shall immediately remove any employee or agent from District property who has been arrested or convicted of any serious or violent felony, as defined by the California Penal Code Sections 667.5 and 1192.7. The District shall be the final arbiter of what constitutes "limited contact." The District may also, in its sole discretion, waive these provisions if it determines that emergency or exceptional circumstances exist which threaten student or staff safety if the work is delayed pending clearance. The Vendor's violation of this section shall constitute a default under Section 14 herein.
15. **Proprietary Information of District.** The Vendor understands and agrees that, in its performance under this Contract or in contemplation thereof, the Vendor may have access to private or confidential information which may be owned or controlled by the District and that such information may contain proprietary details, the disclosure of which to third parties will be damaging to the District, its employees or students. The Vendor also understands and agrees that the disclosure of such information may violate state and/or federal law and may subject the Vendor to civil liability. Consequently, Vendor agrees that all information disclosed by the District to the Vendor shall be held in confidence and used only in performance of the Contract. The Vendor shall exercise the same standard of care to protect such information as is used to protect its own proprietary data.
16. **Notices to the Parties.** All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and registered as follows:

If to District:

ATTN: Greg Nelson
Marin Community College District
College of Marin
Vice President of Finance and College Operations
1800 Ignacio Boulevard, Novato, CA 94949

If to Vendor:

ATTN: Rick Schaffzin, CEO
SecureAll
695 Woburn Court_
Mountain View, Ca 94040

17. **Budget and Fiscal Provision.** This Contract is subject to the budget and fiscal policies, regulations, and practices of the District. The amount of the District's obligation hereunder shall not at any time exceed the amount herein stated. The District has no obligation to renew this Contract after expiration of its term.
18. **Attorneys' Fees.** In any action or proceeding instituted by any party under this Contract, the prevailing party shall be entitled to recover from the other party the prevailing party's reasonable costs and expenses in such action or proceeding, including reasonable attorneys' fees and court costs (but not to exceed the actual fees and costs incurred), at trial and at all appellate levels and post judgment proceedings.
19. **Waiver.** Either party's failure at any time to enforce any default or right reserved to it, or to require performance of any of the Contract's terms, covenants, or provisions by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.
20. **Entire Contract.** The entire Contract between the parties is included herein and no warranties expressed or implied, representations, promises, or statements have been made by either party unless endorsed herein in writing and no change or waiver of any provision hereof shall be valid unless made in writing and executed in the same manner as this Contract.
21. **Counterparts.** This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original, and all such counterparts shall, collectively, constitute one and the same instrument notwithstanding that all parties are not signatories to each counterpart. If the parties mutually agree to do so, the parties may validly execute and deliver this Contract through facsimile or PDF electronic copies of the executed Contract provided that an executed ink original of this Contract is forwarded by overnight delivery service in accordance with this Contract on the next business day after such transmission by facsimile or PDF.
22. **Warranty of Authority.** Each of the signatories to this Contract warrants and represents that it/he/she is competent and authorized to enter into this Contract and that no part of the Claims has been assigned or transferred to any third party.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the District and Vendor hereto have executed this Lease as of the date first set forth above.

SecureAll Corporation

Chief Executive Officer

Name: Rick Schaffzin

Signature: 

MARIN COMMUNITY COLLEGE DISTRICT

VICE PRESIDENT OF FINANCE AND
COLLEGE OPERATIONS

Name: Greg Nelson

Signature: 