

**SERVICE AGREEMENT**

This Service Agreement (“Agreement”) is dated March 19, 2024 and is between Public Risk Innovation, Solutions, and Management (PRISM) a California Joint Powers Authority (“PRISM”), and the County of Fresno, a political subdivision of the State of California (“County”).

**Recitals**

WHEREAS, the County requires the use of the ClaimsXPress (“SIMS”) claims management software (“SIMS software”) to manage, track, and process its general liability and medical malpractice claims;

WHEREAS, the County and PRISM entered into Agreement A-14-401 on July 15, 2014 for the perpetual licensing of the SIMS software, which the County continues to utilize;

WHEREAS, PRISM represents that on July 31, 2023, it entered into a Master Subscription Agreement with CHSI Technologies Corp dba Spear Technologies, a Nevada corporation (“Spear”), by which PRISM has authorized Spear to provide hosting services for the SIMS software to its members (“Master Subscription Agreement”); and

WHEREAS, PRISM and the County now wish to enter into an Agreement for SIMS software and for the support of the SIMS software, as well as hosting services for the software under the same terms and conditions of the Master Subscription Agreement; and

WHEREAS, County has no contractual rights with or obligations to Spear.

The parties therefore agree as follows:

**Article 1**

**Contractor’s Services**

1.1 **Scope of Services.** PRISM shall perform all services as provided in Exhibit A to this Agreement, titled “Scope of Services.”

1.2 **Representation.** PRISM represents that it is qualified, ready, willing, and able to perform all services as provided in Exhibit A to this Agreement.

1.3 **Compliance with Laws.** PRISM shall, at its own cost, comply with all applicable federal, state, and local laws and regulations in the performance of its obligations under this

1 Agreement, including but not limited to workers compensation, labor, and confidentiality laws and  
2 regulations.

3 **Article 2**

4 **County's Responsibilities**

5 2.1 The County shall do all of the following:

- 6 A. Cooperate with PRISM as reasonably necessary for PRISM to perform its services  
7 under this Agreement.
- 8 B. Utilize the SIMS software under the same terms and conditions provided for in the  
9 Master Subscription Agreement, as well as the terms and conditions set forth herein.
- 10 C. Notwithstanding anything to the contrary in this Agreement, any reference in this  
11 Agreement to the Master Subscription Agreement shall not obligate the County under  
12 the Master Subscription Agreement.

13 **Article 3**

14 **Compensation, Invoices, and Payments**

15 3.1 The County agrees to pay, and PRISM agrees to receive, compensation for the  
16 performance of its services under this Agreement as described in Exhibit B to this Agreement,  
17 titled "Compensation."

18 3.2 **Maximum Compensation.** The maximum compensation payable to PRISM under this  
19 Agreement is set forth in Exhibit B to this Agreement. PRISM acknowledges that the County is a  
20 local government entity, and does so with notice that the County's powers are limited by the  
21 California Constitution and by State law, and with notice that PRISM may receive compensation  
22 under this Agreement only for services performed according to the terms of this Agreement and  
23 while this Agreement is in effect. PRISM further acknowledges that County employees have no  
24 authority to pay PRISM except as expressly provided in this Agreement.

25 3.3 **Invoices.** PRISM shall submit one invoice for services annually to the Department of  
26 Human Resources, Risk Management, 2220 Tulare St., 16<sup>th</sup> Floor, Fresno, CA 93721.  
27  
28



- 1 A. A notice delivered by personal service is effective upon service to the recipient.
- 2 B. A notice delivered by first-class United States mail is effective three County  
3 business days after deposit in the United States mail, postage prepaid, addressed to  
4 the recipient.
- 5 C. A notice delivered by an overnight commercial courier service is effective one  
6 County business day after deposit with the overnight commercial courier service,  
7 delivery fees prepaid, with delivery instructions given for next day delivery, addressed  
8 to the recipient.
- 9 D. A notice delivered by telephonic facsimile transmission or by PDF document  
10 attached to an email is effective when transmission to the recipient is completed (but,  
11 if such transmission is completed outside of County business hours, then such delivery  
12 is deemed to be effective at the next beginning of a County business day), provided  
13 that the sender maintains a machine record of the completed transmission.

14 **5.4 Claims Presentation.** For all claims arising from or related to this Agreement, nothing  
15 in this Agreement establishes, waives, or modifies any claims presentation requirements or  
16 procedures provided by law, including the Government Claims Act (Division 3.6 of Title 1 of the  
17 Government Code, beginning with section 810).

## 18 **Article 6**

### 19 **Termination and Suspension**

20 **6.1 Termination for Non-Allocation of Funds.** The terms of this Agreement are  
21 contingent on the approval of funds by the appropriating government agency. If sufficient funds  
22 are not allocated, then the County, upon at least 90 days' advance written notice to PRISM, may:

- 23 A. Attempt to negotiate a modification of the terms of this Agreement; or  
24 B. Terminate this Agreement.

### 25 **6.2 Termination for Breach.**

26 A. Upon determining that a breach (as defined in paragraph (C) below) has occurred,  
27 either party may give written notice of the breach to the breaching party. The written  
28

1 notice may suspend performance under this Agreement, and must provide at least 30  
2 days for the other party to cure the breach.

3 B. If the breaching party fails to cure the breach to the non-breaching party's  
4 satisfaction within the time stated in the written notice, the non-breaching party may  
5 terminate this Agreement immediately.

6 C. For purposes of this section, a breach occurs when, in the determination of the  
7 non-breaching party, the breaching party has:

- 8 (1) Obtained or used funds illegally or improperly;
- 9 (2) Failed to comply with any part of this Agreement;
- 10 (3) Submitted a substantially incorrect or incomplete report to the County; or
- 11 (4) Improperly performed any of its obligations under this Agreement.

12 **6.3 Termination without Cause.** In circumstances other than those set forth above, either  
13 party may terminate this Agreement by giving at least 90 days advance written notice to the other  
14 party.

15 **6.4 No Penalty or Further Obligation.** Any termination of this Agreement by either party  
16 under this Article 6 is without penalty to or further obligation of the other party.

17 **6.5 County's Rights upon Termination.** Upon termination for breach under this Article  
18 6, the County may demand repayment by PRISM of any monies disbursed to PRISM under this  
19 Agreement that were not expended in compliance with this Agreement. PRISM shall promptly  
20 refund all such monies upon demand. This section survives the termination of this Agreement.

## 21 **Article 7**

### 22 **Independent Contractor**

23 **7.1 Status.** In performing under this Agreement, PRISM, including its officers, agents,  
24 employees, and volunteers, is at all times acting and performing as an independent contractor, in  
25 an independent capacity, and not as an officer, agent, servant, employee, joint venturer, partner,  
26 or associate of the County.



1 **Article 9**

2 **Insurance**

3 9.1 PRISM shall comply with all the insurance requirements in Exhibit C to this Agreement.

4 **Article 10**

5 **Inspections, Audits, and Public Records**

6 10.1 **Inspection of Documents.** PRISM shall make available to the County, and the  
7 County may examine at any time during business hours and as often as the County deems  
8 necessary, all of PRISM's records and data with respect to the matters covered by this Agreement,  
9 excluding attorney-client privileged communications. PRISM shall, upon request by the County,  
10 permit the County to audit and inspect all of such records and data to ensure PRISM's compliance  
11 with the terms of this Agreement.

12 10.2 **State Audit Requirements.** If the compensation to be paid by the County under this  
13 Agreement exceeds \$10,000, PRISM is subject to the examination and audit of the California  
14 State Auditor, as provided in Government Code section 8546.7, for a period of three years after  
15 final payment under this Agreement. This section survives the termination of this Agreement.

16 10.3 **Public Records.** The County is not limited in any manner with respect to its public  
17 disclosure of this Agreement or any record or data that PRISM may provide to the County. The  
18 County's public disclosure of this Agreement or any record or data that PRISM may provide to  
19 the County may include but is not limited to the following:

20 A. The County may voluntarily, or upon request by any member of the public or  
21 governmental agency, disclose this Agreement to the public or such governmental  
22 agency.

23 B. The County may voluntarily, or upon request by any member of the public or  
24 governmental agency, disclose to the public or such governmental agency any record  
25 or data that PRISM may provide to the County, unless such disclosure is prohibited by  
26 court order.

1 C. This Agreement, and any record or data that PRISM may provide to the County, is  
2 subject to public disclosure under the Ralph M. Brown Act (California Government  
3 Code, Title 5, Division 2, Part 1, Chapter 9, beginning with section 54950).

4 D. This Agreement, and any record or data that PRISM may provide to the County, is  
5 subject to public disclosure as a public record under the California Public Records Act  
6 (California Government Code, Title 1, Division 7, Chapter 3.5, beginning with section  
7 6250) ("CPRA").

8 E. This Agreement, and any record or data that PRISM may provide to the County, is  
9 subject to public disclosure as information concerning the conduct of the people's  
10 business of the State of California under California Constitution, Article 1, section 3,  
11 subdivision (b).

12 F. Any marking of confidentiality or restricted access upon or otherwise made with  
13 respect to any record or data that PRISM may provide to the County shall be  
14 disregarded and have no effect on the County's right or duty to disclose to the public  
15 or governmental agency any such record or data.

16 **10.4 Public Records Act Requests.** If the County receives a written or oral request  
17 under the CPRA to publicly disclose any record that is in PRISM's possession or control, and  
18 which the County has a right, under any provision of this Agreement or applicable law, to possess  
19 or control, then the County may demand, in writing, that PRISM deliver to the County, for purposes  
20 of public disclosure, the requested records that may be in the possession or control of PRISM.  
21 Within five business days after the County's demand, PRISM shall (a) deliver to the County all of  
22 the requested records that are in PRISM's possession or control, together with a written statement  
23 that PRISM, after conducting a diligent search, has produced all requested records that are in  
24 PRISM's possession or control, or (b) provide to the County a written statement that PRISM, after  
25 conducting a diligent search, does not possess or control any of the requested records. PRISM  
26 shall cooperate with the County with respect to any County demand for such records. If PRISM  
27 wishes to assert that any specific record or data is exempt from disclosure under the CPRA or  
28 other applicable law, it must deliver the record or data to the County and assert the exemption by

1 citation to specific legal authority within the written statement that it provides to the County under  
2 this section. PRISM's assertion of any exemption from disclosure is not binding on the County,  
3 but the County will give at least 10 days' advance written notice to PRISM before disclosing any  
4 record subject to PRISM's assertion of exemption from disclosure. PRISM shall indemnify the  
5 County for any court-ordered award of costs or attorney's fees under the CPRA that results from  
6 PRISM's delay, claim of exemption, failure to produce any such records, or failure to cooperate  
7 with the County with respect to any County demand for any such records.

## 8 **Article 11**

### 9 **General Terms**

10 11.1 **Modification.** Except as provided in Article 6, "Termination and Suspension," this  
11 Agreement may not be modified, and no waiver is effective, except by written agreement signed  
12 by both parties. PRISM acknowledges that County employees have no authority to modify this  
13 Agreement except as expressly provided in this Agreement.

14 11.2 **Non-Assignment.** Neither party may assign its rights or delegate its obligations under  
15 this Agreement without the prior written consent of the other party.

16 11.3 **Governing Law.** The laws of the State of California govern all matters arising from or  
17 related to this Agreement.

18 11.4 **Jurisdiction and Venue.** This Agreement is signed and performed in Fresno County,  
19 California. PRISM consents to California jurisdiction for actions arising from or related to this  
20 Agreement, and such actions must be brought and maintained in Fresno County.

21 11.5 **Construction.** The final form of this Agreement is the result of the parties' combined  
22 efforts. If anything in this Agreement is found by a court of competent jurisdiction to be ambiguous,  
23 that ambiguity shall not be resolved by construing the terms of this Agreement against either party.

24 11.6 **Days.** Unless otherwise specified, "days" means calendar days.

25 11.7 **Headings.** The headings and section titles in this Agreement are for convenience only  
26 and are not part of this Agreement.

27 11.8 **Severability.** If anything in this Agreement is found by a court of competent jurisdiction  
28 to be unlawful or otherwise unenforceable, the balance of this Agreement remains in effect, and

1 the parties shall make best efforts to replace the unlawful or unenforceable part of this Agreement  
2 with lawful and enforceable terms intended to accomplish the parties' original intent.

3 11.9 **Nondiscrimination.** During the performance of this Agreement, neither shall  
4 unlawfully discriminate against any employee or applicant for employment, or recipient of services,  
5 because of race, religious creed, color, national origin, ancestry, physical disability, mental  
6 disability, medical condition, genetic information, marital status, sex, gender, gender identity,  
7 gender expression, age, sexual orientation, military status or veteran status pursuant to all  
8 applicable State of California and federal statutes and regulation.

9 11.10 **No Waiver.** Payment, waiver, or discharge by the County of any liability or obligation  
10 of PRISM under this Agreement on any one or more occasions is not a waiver of performance of  
11 any continuing or other obligation of PRISM and does not prohibit enforcement by the County of  
12 any obligation on any other occasion.

13 11.11 **Entire Agreement.** This Agreement, including its exhibits, is the entire agreement  
14 between PRISM and the County with respect to the subject matter of this Agreement, and it  
15 supersedes all previous negotiations, proposals, commitments, writings, advertisements,  
16 publications, and understandings of any nature unless those things are expressly included in this  
17 Agreement. If there is any inconsistency between the terms of this Agreement without its exhibits  
18 and the terms of the exhibits, then the inconsistency will be resolved by giving precedence first to  
19 the terms of this Agreement without its exhibits, and then to the terms of the exhibits.

20 11.12 **No Third-Party Beneficiaries.** This Agreement does not and is not intended to create  
21 any rights or obligations for any person or entity except for the parties.

22 11.13 **Authorized Signature.** PRISM represents and warrants to the County that:

23 A. PRISM is duly authorized and empowered to sign and perform its obligations under  
24 this Agreement.

25 B. The individual signing this Agreement on behalf of PRISM is duly authorized to do  
26 so and his or her signature on this Agreement legally binds PRISM to the terms of this  
27 Agreement.  
28



1 The parties are signing this Agreement on the date stated in the introductory clause.

2 PRISM

COUNTY OF FRESNO

3  
4 



5 Tom Pelster, CIO  
6 75 Iron Point Cir., #200  
Folsom, CA 95630

Nathan Magsig, Chairman of the Board of  
Supervisors of the County of Fresno

7 **Attest:**  
8 Bernice E. Seidel  
9 Clerk of the Board of Supervisors  
County of Fresno, State of California

10 By:   
Deputy

11 For accounting use only:

12 Org No.:89250100  
13 Account No.:7100  
Fund No.:1060  
14 Subclass No.:10000

# Exhibit A

## Scope of Services

PRISM agrees to work with Spear to have Spear provide hosting services for the SIMS software (SIMS) to County, and County agrees to utilize the SIMS system, under the same terms and conditions provided for in the Master Subscription Agreement,, dated April 4, 2013 between PRISM's successor of interest, the California State Association of Counties Excess Insurance Authority and Systema Software, LLC, as well as the terms and conditions set forth herein for the term of this Agreement. County's specific version of the SIMS system shall hereafter be referred to as the "County's Instance of SIMS."

PRISM shall:

- a. Ensure and support Spear's provision of hosting services for the SIMS software to County, including cloud-hosting to County and the responsibility for up-time support for all cloud server(s);
- b. Provide the initial front-line support of the SIMS software to County's users, which includes but is not limited to, initial basic user technical support, report development, and template development.

In the event that PRISM migrates data to a new claims system, County will be provided at least ninety (90) days' notice before that migration occurs. In addition, County shall be given the option to contract directly with Insurity LLC or Spear for County's instance of SIMS, or contract with PRISM to migrate to and manage data in PRISM's new claims system, Spectra.

## Exhibit B

### Compensation

PRISM will be compensated for performance of its services under this Agreement as provided in this Exhibit B. PRISM is not entitled to any compensation except as expressly provided in this Exhibit B.

**Payment for Services:** County agrees to pay PRISM on a “pass through” basis for costs incurred related to the County’s instance of SIMS. These costs include the annual Hosting costs associated with the five (5) concurrent software licenses as well as two (2) additional interfaces/modules currently developed for County’s account (Check issuance and positive pay). “Pass through basis” means that PRISM is invoiced annually by Spear for Hosting Services costs incurred by Spear related to County’s instance of SIMS and that PRISM then invoices those same amounts to County without markup. All applicable Hosting costs are set forth in the below tables. PRISM includes an administration fee annually for the support provided by PRISM.

Description	April 1, 2024 – July 31, 2024	August 1, 2024 – July 31, 2025 +	August 1, 2025 – July 31, 2026
Spear Hosting <sup>†</sup>	\$6,617	\$8,542	\$8,735
PRISM Administration*	\$0	\$1,000	\$1,600
Total Costs	\$6,617	\$9,542	\$10,335

<sup>†</sup>Cost includes a 10% annual increase, starting with the term of August 1, 2024 – July 31, 2025.

\* 2023/2024 Administration fee has already been paid for the year through prior agreement. The PRISM Administration fee will not exceed amount listed in the table

# Exhibit C

## Insurance Requirements

### 1. Required Policies

Without limiting the County's right to obtain indemnification from PRISM or any third parties, Contractor, at its sole expense, shall maintain in full force and effect the following insurance policies throughout the term of this Agreement.

- (A) **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. PRISM 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 PRISM's policy.
- (B) **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.
- (C) **Workers Compensation.** Workers compensation insurance as required by the laws of the State of California with statutory limits.
- (D) **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.
- (E) **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 PRISM's obligations under this Agreement, including but not limited to claims involving Cyber Risks.
- (F) **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 PRISM.

If PRISM 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.

### 2. Additional Requirements

- (A) **Verification of Coverage.** Within 30 days after PRISM signs this Agreement, and at any time during the term of this Agreement as requested by the County's Risk Manager or the County Administrative Office, PRISM shall deliver, or cause its broker or producer to deliver, to the County Risk Manager, at 2220 Tulare Street, 16th Floor, Fresno, California

## Exhibit C

93721, or HRRiskManagement@fresnocountyca.gov, and by mail or email to the person identified to receive notices under this Agreement, certificates of insurance and endorsements for all of the coverages required under this Agreement.

- (i) Each insurance certificate must state that: (1) the insurance coverage has been obtained and is in full force; (2) the County, its officers, agents, employees, and volunteers are not responsible for any premiums on the policy; and (3) PRISM 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 PRISM's policy.
  - (iii) The technology professional liability insurance certificate must also state that coverage encompasses all of PRISM's obligations under this Agreement, including but not limited to claims involving Cyber Risks, as that term is defined in this Agreement.
  - (iv) 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 intangible property (including but not limited to information or data) that is in the care, custody, or control of PRISM.
- (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, PRISM 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 as required in this paragraph. For cancellation of the policy for nonpayment of premium, PRISM shall, or shall cause the insurer to, provide written notice to the County not less than 10 days in advance of cancellation. For cancellation of the policy for any other reason, and for any other change to the policy, PRISM shall, or shall cause the insurer to, provide written notice to the County not less than 30 days in advance of cancellation or change. The County in its sole discretion may determine that the failure of PRISM or its insurer to timely provide a written notice required by this paragraph is a breach of this Agreement.
- (D) **County's Entitlement to Greater Coverage.** If PRISM has or obtains insurance with broader coverage, higher limits, or both, than what is required under this Agreement, then the County requires and is entitled to the broader coverage, higher limits, or both. To that end, PRISM shall deliver, or cause its broker or producer to deliver, to the County's Risk

## Exhibit C

Manager certificates of insurance and endorsements for all of the coverages that have such broader coverage, higher limits, or both, as required under this Agreement.

- (E) **Waiver of Subrogation.** PRISM 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. PRISM is solely responsible to obtain any policy endorsement that may be necessary to accomplish that waiver, but PRISM's waiver of subrogation under this paragraph is effective whether or not PRISM obtains such an endorsement.
- (F) **County's Remedy for Contractor's Failure to Maintain.** If PRISM 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 PRISM. The County may offset such charges against any amounts owed by the County to PRISM under this Agreement.
- (G) **Subcontractors.** PRISM shall require and verify that all subcontractors used by PRISM to provide services under this Agreement maintain insurance meeting all insurance requirements provided in this Agreement. This paragraph does not authorize PRISM to provide services under this Agreement using subcontractors.