

1 **SERVICE AGREEMENT**

2 This Service Agreement ("Agreement") is dated March 19, 2024 and is between
3 Medical Priority Consultants, Inc., dba Priority Dispatch, a Utah corporation ("Contractor"), and
4 the County of Fresno, a political subdivision of the State of California ("County").

5 **Recitals**

6 A. The County has a need for licensure renewal, maintenance, and support for their
7 Medical Priority Dispatch System ("MPDS") which is made up of medical priority dispatch
8 software (ProQA), reporting system software ("Aqua"), and "Card Set," each of which are
9 defined in Exhibit A and Exhibit F.

10 B. The Contractor represents to the County that the Contractor is able to provide the
11 County with maintenance and support for MPDS.

12 C. The County desires to engage the Contractor to provide maintenance and support for
13 MPDS, pursuant to the terms and conditions of this Agreement.

14 The parties therefore agree as follows:

15 **Article 1**

16 **Contractor's Services**

17 1.1 **Scope of Services.** The Contractor shall perform all of the services provided in
18 Exhibit A and Exhibit F to this Agreement.

19 1.2 **Representation.** The Contractor represents that it is qualified, ready, willing, and
20 able to perform all of the services provided in this Agreement.

21 1.3 **Compliance with Laws.** The Contractor shall, at its own cost, comply with all
22 applicable federal, state, and local laws and regulations in the performance of its obligations
23 under this Agreement, including but not limited to workers compensation, labor, and
24 confidentiality laws and regulations.

25 **Article 2**

26 **County's Responsibilities**

27 2.1 The County shall provide a County representative to represent the County, who
28 will work with the Contractor to carry out the Contractor's obligations under this Agreement.

1 The County representative will be the County's Internal Services Department Director/Chief
2 Information Officer and/or their designee.

3 2.2 The County shall be accountable for the responsibilities as set forth in Exhibit A
4 to this Agreement.

5 **Article 3**

6 **Compensation, Invoices, and Payments**

7 3.1 The County agrees to pay, and the Contractor agrees to receive, compensation
8 for the performance of its services under this Agreement as described in Exhibit B to this
9 Agreement.

10 **Maximum Compensation.** The maximum compensation payable to the Contractor
11 under this Agreement for the first year is \$132,400. The maximum compensation payable to
12 the Contractor under this Agreement for the second year is \$132,400. The maximum
13 compensation payable to the Contractor under this Agreement for the third year is \$132,400.
14 The maximum compensation payable to the Contractor is \$397,200 for the initial three-year
15 term of this Agreement. Upon utilization of the first one-year extension option ("Year 4"), if
16 any, this maximum shall increase by \$132,400. Upon utilization of the final one-year
17 extension option, if any, this maximum shall increase by an additional \$132,400 ("Year 5").
18 The total maximum compensation payable to the Contractor under this Agreement is
19 \$662,000 for the entire potential five-year term as set forth in Exhibit B. In the event the total
20 maximum compensation amount for each year is not fully expended, the remaining unspent
21 funding amounts shall roll over to each subsequent term's established maximum
22 compensation. The Contractor acknowledges that the County is a local government entity,
23 and does so with notice that the County's powers are limited by the California Constitution
24 and by State law, and with notice that the Contractor may receive compensation under this
25 Agreement only for services performed according to the terms of this Agreement and while
26 this Agreement is in effect, and subject to the maximum amount payable under this section.
27 The Contractor further acknowledges that County employees have no authority to pay the
28 Contractor except as expressly provided in this Agreement.

1 **For the County:**

2 Director, Department of Public Health
3 County of Fresno
4 1221 Fulton Street
5 Fresno, CA 93721

6 **For the Contractor:**

7 Priority Dispatch Corp
8 Attn: Legal Dept.
9 110 S Regent Street, Suite 500
10 Salt Lake City, UT 84111
11 Legaldepartment@prioritydispatch.net

12 5.2 **Change of Contact Information.** Either party may change the information in
13 section 5.1 by giving notice as provided in section 5.3.

14 5.3 **Method of Delivery.** Each notice between the County and the Contractor
15 provided for or permitted under this Agreement must be in writing, state that it is a notice
16 provided under this Agreement, and be delivered either by personal service, by first-class
17 United States mail, by an overnight commercial courier service, or by Portable Document
18 Format (PDF) document attached to an email.

19 (A) A notice delivered by personal service is effective upon service to the recipient.

20 (B) A notice delivered by first-class United States mail is effective three County
21 business days after deposit in the United States mail, postage prepaid, addressed to the
22 recipient.

23 (C) A notice delivered by an overnight commercial courier service is effective one
24 County business day after deposit with the overnight commercial courier service,
25 delivery fees prepaid, with delivery instructions given for next day delivery, addressed to
26 the recipient.

27 (D) A notice delivered by PDF document attached to an email is effective when
28 transmission to the recipient is completed (but, if such transmission is completed outside
of County business hours, then such delivery is 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.

5.4 **Claims Presentation.** For all claims arising from or related to this Agreement,
nothing in this Agreement establishes, waives, or modifies any claims presentation

1 requirements or procedures provided by law, including the Government Claims Act (Division
2 3.6 of Title 1 of the Government Code, beginning with section 810).

3 **Article 6**

4 **Termination and Suspension**

5 **6.1 Termination for Non-Allocation of Funds.** The terms of this Agreement are
6 contingent on the approval of funds by the appropriating government agency. If sufficient
7 funds are not allocated, then the County, upon at least 30 days' advance written notice to
8 the Contractor, may:

9 (A) Modify the services provided by the Contractor under this Agreement; or

10 (B) Terminate this Agreement.

11 **6.2 Termination for Breach.**

12 (A) Upon determining that a breach (as defined in paragraph (C) below) has
13 occurred, the County may give written notice of the breach to the Contractor. The written
14 notice may suspend performance under this Agreement, and must provide at least 30
15 days for the Contractor to cure the breach.

16 (B) If the Contractor fails to cure the breach to the County's satisfaction within the
17 time stated in the written notice, the County may terminate this Agreement immediately.

18 (C) For purposes of this section, a breach occurs when, in the determination of the
19 County, the Contractor has:

20 (1) Obtained or used funds illegally or improperly;

21 (2) Failed to comply with any part of this Agreement;

22 (3) Submitted a substantially incorrect or incomplete report to the County; or

23 (4) Improperly performed any of its obligations under this Agreement.

24 **6.3 Termination without Cause.** In circumstances other than those set forth above,
25 the County may terminate this Agreement by giving at least 30 days advance written notice
26 to the Contractor.

27 **6.4 No Penalty or Further Obligation.** Any termination of this Agreement by the
28 County under this Article 6 is without penalty to or further obligation of the County.

1 penalties, and liabilities of any kind to the County, the Contractor, or any third party that
2 arise from or relate to the performance or failure to perform by the Contractor (or any of its
3 officers, agents, subcontractors, or employees) under this Agreement. The County may
4 conduct or participate in its own defense without affecting the Contractor's obligation to
5 indemnify and hold harmless or defend the County. For the sake of clarification, it is
6 understood that Contractor does not guarantee, nor indemnify, nor shall the Contractor hold
7 any party harmless to any use of or reliance upon the dispatch protocols or licensed
8 products provided by Contractor under this agreement.

9 8.2 **Survival.** This Article 8 survives the termination of this Agreement.

10 **Article 9**

11 **Insurance**

12 9.1 The Contractor shall comply with all the insurance requirements in Exhibit D to
13 this Agreement.

14 **Article 10**

15 **Inspections, Audits, and Public Records**

16 10.1 **Inspection of Documents.** The Contractor shall make available to the County,
17 and the County may examine at any time during business hours and as often as the County
18 deems necessary, all of the Contractor's records and data with respect to the matters
19 covered by this Agreement, excluding attorney-client privileged communications. The
20 Contractor shall, upon request by the County, permit the County to audit and inspect all of
21 such records and data to ensure the Contractor's compliance with the terms of this
22 Agreement.

23 10.2 **State Audit Requirements.** If the compensation to be paid by the County under
24 this Agreement exceeds \$10,000, the Contractor is subject to the examination and audit of
25 the California State Auditor, as provided in Government Code section 8546.7, for a period of
26 three years after final payment under this Agreement. This section survives the termination
27 of this Agreement.

1 **10.3 Public Records.** The County is not limited in any manner with respect to its
2 public disclosure of this Agreement or any record or data that the Contractor may provide to
3 the County. The County's public disclosure of this Agreement or any record or data that the
4 Contractor may provide to the County may include but is not limited to the following:

5 (A) The County may voluntarily, or upon request by any member of the public or
6 governmental agency, disclose this Agreement to the public or such governmental
7 agency.

8 (B) The County may voluntarily, or upon request by any member of the public or
9 governmental agency, disclose to the public or such governmental agency any record or
10 data that the Contractor may provide to the County, unless such disclosure is prohibited
11 by court order.

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

15 (D) This Agreement, and any record or data that the Contractor may provide to the
16 County, is subject to public disclosure as a public record under the California Public
17 Records Act (California Government Code, Title 1, Division 10, Chapter 3, beginning
18 with section 7920.200) ("CPRA").

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

23 (F) Any marking of confidentiality or restricted access upon or otherwise made with
24 respect to any record or data that the Contractor may provide to the County shall be
25 disregarded and have no effect on the County's right or duty to disclose to the public or
26 governmental agency any such record or data.

27 **10.4 Public Records Act Requests.** If the County receives a written or oral request
28 under the CPRA to publicly disclose any record that is in the Contractor's possession or

1 control, and which the County has a right, under any provision of this Agreement or
2 applicable law, to possess or control, then the County may demand, in writing, that the
3 Contractor deliver to the County, for purposes of public disclosure, the requested records
4 that may be in the possession or control of the Contractor. Within five business days after
5 the County's demand, the Contractor shall (a) deliver to the County all of the requested
6 records that are in the Contractor's possession or control, together with a written statement
7 that the Contractor, after conducting a diligent search, has produced all requested records
8 that are in the Contractor's possession or control, or (b) provide to the County a written
9 statement that the Contractor, after conducting a diligent search, does not possess or
10 control any of the requested records. The Contractor shall cooperate with the County with
11 respect to any County demand for such records. If the Contractor wishes to assert that any
12 specific record or data is exempt from disclosure under the CPRA or other applicable law, it
13 must deliver the record or data to the County and assert the exemption by citation to specific
14 legal authority within the written statement that it provides to the County under this section.
15 The Contractor's assertion of any exemption from disclosure is not binding on the County,
16 but the County will give at least 10 days' advance written notice to the Contractor before
17 disclosing any record subject to the Contractor's assertion of exemption from disclosure.
18 The Contractor shall indemnify the County for any court-ordered award of costs or attorney's
19 fees under the CPRA that results from the Contractor's delay, claim of exemption, failure to
20 produce any such records, or failure to cooperate with the County with respect to any
21 County demand for any such records.

22 **Article 11**

23 **Disclosure of Self-Dealing Transactions**

24 11.1 **Applicability.** This Article 11 applies if the Contractor is operating as a
25 corporation, or changes its status to operate as a corporation.

26 11.2 **Duty to Disclose.** If any member of the Contractor's board of directors is party to
27 a self-dealing transaction, he or she shall disclose the transaction by completing and signing
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1 a "Self-Dealing Transaction Disclosure Form" (Exhibit C to this Agreement) and submitting it
2 to the County before commencing the transaction or immediately after.

3 11.3 **Definition.** "Self-dealing transaction" means a transaction to which the
4 Contractor is a party and in which one or more of its directors, as an individual, has a
5 material financial interest.

6 **Article 12**

7 **General Terms**

8 12.1 **Modification.** Except as provided in Article 6, "Termination and Suspension," this
9 Agreement may not be modified, and no waiver is effective, except by written agreement
10 signed by both parties. The Contractor acknowledges that County employees have no
11 authority to modify this Agreement except as expressly provided in this Agreement.

12 12.2 **Non-Assignment.** Neither party may assign its rights or delegate its obligations
13 under this Agreement without the prior written consent of the other party.

14 12.3 **Governing Law.** The laws of the State of California govern all matters arising
15 from or related to this Agreement.

16 12.4 **Jurisdiction and Venue.** This Agreement is signed and performed in Fresno
17 County, California. The Contractor consents to California jurisdiction for actions arising from
18 or related to this Agreement, and, subject to the Government Claims Act, all such actions
19 must be brought and maintained in Fresno County.

20 12.5 **Construction.** The final form of this Agreement is the result of the parties'
21 combined efforts. If anything in this Agreement is found by a court of competent jurisdiction
22 to be ambiguous, that ambiguity shall not be resolved by construing the terms of this
23 Agreement against either party.

24 12.6 **Days.** Unless otherwise specified, "days" means calendar days.

25 12.7 **Headings.** The headings and section titles in this Agreement are for convenience
26 only and are not part of this Agreement.

27 12.8 **Severability.** If anything in this Agreement is found by a court of competent
28 jurisdiction to be unlawful or otherwise unenforceable, the balance of this Agreement

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

4 **12.9 Nondiscrimination.** During the performance of this Agreement, the Contractor
5 shall not unlawfully discriminate against any employee or applicant for employment, or
6 recipient of services, because of race, religious creed, color, national origin, ancestry,
7 physical disability, mental disability, medical condition, genetic information, marital status,
8 sex, gender, gender identity, gender expression, age, sexual orientation, military status or
9 veteran status pursuant to all applicable State of California and federal statutes and
10 regulation.

11 **12.10 No Waiver.** Payment, waiver, or discharge by the County of any liability or
12 obligation of the Contractor under this Agreement on any one or more occasions is not a
13 waiver of performance of any continuing or other obligation of the Contractor and does not
14 prohibit enforcement by the County of any obligation on any other occasion.

15 **12.11 Entire Agreement.** This Agreement, including its exhibits, is the entire
16 agreement between the Contractor and the County with respect to the subject matter of this
17 Agreement, and it supersedes all previous negotiations, proposals, commitments, writings,
18 advertisements, publications, and understandings of any nature unless those things are
19 expressly included in this Agreement. If there is any inconsistency between the terms of this
20 Agreement without its exhibits and the terms of the exhibits, then the inconsistency will be
21 resolved by giving precedence first to the terms of this Agreement without its exhibits, and
22 then to the terms of the exhibits.

23 **12.12 No Third-Party Beneficiaries.** This Agreement does not and is not intended to
24 create any rights or obligations for any person or entity except for the parties.

25 **12.13 Authorized Signature.** The Contractor represents and warrants to the County
26 that:

27 (A) The Contractor is duly authorized and empowered to sign and perform its
28 obligations under this Agreement.

1 (B) The individual signing this Agreement on behalf of the Contractor is duly
2 authorized to do so and his or her signature on this Agreement legally binds the
3 Contractor to the terms of this Agreement.

4 12.14 **Electronic Signatures.** The parties agree that this Agreement may be executed
5 by electronic signature as provided in this section.

6 (A) An “electronic signature” means any symbol or process intended by an individual
7 signing this Agreement to represent their signature, including but not limited to (1) a
8 digital signature; (2) a faxed version of an original handwritten signature; or (3) an
9 electronically scanned and transmitted (for example by PDF document) version of an
10 original handwritten signature.

11 (B) Each electronic signature affixed or attached to this Agreement (1) is deemed
12 equivalent to a valid original handwritten signature of the person signing this Agreement
13 for all purposes, including but not limited to evidentiary proof in any administrative or
14 judicial proceeding, and (2) has the same force and effect as the valid original
15 handwritten signature of that person.

16 (C) The provisions of this section satisfy the requirements of Civil Code section
17 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3,
18 Part 2, Title 2.5, beginning with section 1633.1).

19 (D) Each party using a digital signature represents that it has undertaken and
20 satisfied the requirements of Government Code section 16.5, subdivision (a),
21 paragraphs (1) through (5), and agrees that each other party may rely upon that
22 representation.

23 (E) This Agreement is not conditioned upon the parties conducting the transactions
24 under it by electronic means and either party may sign this Agreement with an original
25 handwritten signature.

26 12.15 **Counterparts.** This Agreement may be signed in counterparts, each of which is
27 an original, and all of which together constitute this Agreement.

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

Medical Priority Consultants, Inc., dba Priority Dispatch Corp.

COUNTY OF FRESNO

J. Simón Cantarero
Simón Cantarero – General Counsel & Corp. Secretary

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

110 S Regent Street, Suite 500
Salt Lake City, UT 84111

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

By: *Hanan M*
Deputy

For accounting use only:

Org No.:56201693
Account No.:7309
Fund No.:0001
Subclass No.:10000

Exhibit A

Scope of Services

I. Definitions

Acceptance Criteria: The performance and operating specifications which the System must meet at a minimum, as set out of referred to in this Agreement.

Acceptance Test: The process of testing a specific function or functions to determine if the operation or operations are as stated in this Agreement.

AQUA: Reporting tool for ProQA which allows tracking of compliance.

Card Set: Manual flip cards that contains questions and resulting determinates for the problem nature.

Change Control Process: Process used by the County to inform staff of new or updates production use systems.

County System Hardware: The central processing units owned or leased by the County for which the County is licensed to use the System Software, any back-up equipment for such central processing units and any peripheral hardware such as terminals, printers, and personal computers as described in the Agreement.

County System Software: The operating system and database software installed on the County system Hardware.

License: The meaning assigned to the term "License" as defined in Section IIA of this Agreement and the rights and obligations it creates under the laws of the United States of America and the State of California including without limitation, copyright, and intellectual property law.

Monies: The term "Monies", "Charges", "Price", and "Fees" will be considered equivalent.

ProQA: Software that integrates with the VisiCAD System and provides the dispatch the questions to ask to determine the problem nature of the 911 caller.

Public Records: Public Records includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

Exhibit A

1 **Supplier:** The terms “Supplier”, “Vendor”, and “Priority Dispatch Corporation” all refer to
2 the Contractor and are considered to be equivalent throughout this Agreement.

3 **System:** The System Software and System Documentation, collectively. Reference to
4 the “System” shall include any component thereof. All modifications and enhancements to the
5 System shall be deemed to be part of the System as defined herein and shall be subject to all
6 terms and conditions set forth herein. The System consists of MPDS which supports the Fresno
7 County Department of Public Health, all interfaces, and third-party software required for the
8 System to function.

9 **System Documentation:** The documentation relating to the System Software, and all
10 manuals, reports, brochures, sample runs, specifications, and other materials comprising such
11 documentation provided by the Contractor in connection with the System Software pursuant to
12 this Agreement.

13 **System Operation:** The general operation of the County’s hardware and all software
14 including, but not limited to, system restarts, configuration and operation of the system
15 peripherals (such as printers, modems, and terminals), installation of new software releases and
16 other related activities.

17 **System Installation:** All software has been delivered, has been physically loaded on a
18 computer, and the County has successfully executed program sessions.

19 **System Software:** That certain computer software described in this Agreement provided
20 by the Contractor, and all interfaces, coding, tapes, disks, modules, and similar materials
21 comprising such software on or which it is stores. System Software shall not include operating
22 system software.

23 **User:** The terms “User”, “Customer”, and “Licensee” all refer to the County and are
24 considered to be equivalent throughout this Agreement.

25 **II. Obligations of the Contractor**

26 **A. Software License:**

27 See End User License Agreement (EULA) attached hereto as Exhibit F and
28 incorporated herein by reference.

Exhibit A

1 **B. Services:** The Contractor shall provide to the County MPDS System
2 Documentation. Additional documentation may be provided. The Contractor
3 shall provide new System Document corresponding to all new Software
4 Upgrades. The County may print additional copies of all documentation. All
5 System Documentation is to be used by the County only for the purposes
6 identified within this Agreement.

7 **C. System Maintenance and Support:** System maintenance and support
8 includes System Updates as they are released by the Contractor, including
9 Updates as required as a result of regulatory changes. The first day of
10 production use will be identified by the County and communicated to the
11 Contractor. The Contractor will support day-to-day operation of the System
12 including the following services:

13 **i. Support Hours/Scope:** Provide unlimited technical assistance by
14 phone during normal coverage hours (7:00 AM to 6:00 PM Pacific
15 Standard Time [PST], Monday through Friday, except on the
16 Contractor and the County holidays), toll-free telephone assistance
17 to keep the System in, or restored to normal operating condition.
18 The object of this support will be to answer specific questions
19 related to the System Software and the application thereof. Support
20 provided under this Agreement does not include training of new
21 personnel (after initial staff is trained), operation of hardware, or
22 solving other hardware/software problems unrelated to the System
23 Software.

24 **ii. Support Response:** During the term of this Agreement, the
25 Contractor will (a) correct any error or malfunctions in the System as
26 supplied by the Contractor which prevents it from operating in
27 conformance with the specifications set forth in this Agreement or
28 (b) provide a commercially reasonable alternative that will conform to

Exhibit A

1 the specification set forth in this Agreement. If analysis by the
2 Contractor indicates a reported problem is caused by a reproducible
3 error or malfunction in the then-current release of the System
4 Software as supplied and maintained by the Contractor that
5 significantly impacts effective use of the System by the County, the
6 Contractor will, if the System is inoperable, as reported by the
7 County, provide continuous effort to correct the error or to resolve
8 the problem by providing a circumvention.

9 In such cases, the Contractor will provide the County with corrective
10 information, such as corrective documentation and/or program code.
11 The Contractor will endeavor to respond to the County's service
12 request no later than four (4) business hours from the time a call has
13 been received by the Contractor. In the event a person with the
14 necessary expertise is not available when the call is received, the
15 Contractor will endeavor to respond to the service request no later
16 than within one (1) business day.

17 **iii. Remote Virtual Private Network (VPN) Diagnostics):** Remote

18 VPN Diagnostic Support includes:

- 19 • Diagnostic or corrective actions necessary to restore proper
20 MPDS operation.
- 21 • Diagnostic actions which attempt to identify the cause of
22 system problems.
- 23 • Correction of data file problems.
- 24 • Go to Meetings, Go to Assist, or the like.
- 25 • The Contractor product specialist will provide diagnostics via
26 VPN on MPDS, the County will provide any required hardware
27 and equipment necessary at the County for the Contractor
28 VPN support.

Exhibit A

1 **D. Additional System Maintenance Services:** The Contractor may provide
2 additional maintenance services (“Additional License/Service Fees” or
3 “Additional Services Fees”) at an additional charge. Charges will be as
4 identified in Section 6 of this Agreement or, if not included in this Agreement,
5 charges will be at current prices in effect at the time goods or services are
6 provided. Any Additional Maintenance and Support Services requested by the
7 County and determined by the Contractor to be billable by the Contractor
8 must be identified as a chargeable service prior to the service being
9 performed and must be approved in writing in advance by the County
10 Contract Administrator. Additional Maintenance Services include, but are not
11 limited to, the following:

12 **i. Training:** Additional Training at a County facility is available upon
13 request by the County at an additional charge under the terms of
14 this Agreement. Requests for additional training will be reviewed by
15 the Contractor and must be requested in writing in advance by the
16 County Contract Administrator. Charges will be at rates identified in
17 Exhibit B of this Agreement.

18 **ii. Data and System Corrections:** Data and System Corrections
19 include any corrective actions accomplished by the Contractor on-
20 site or via VPN which are necessary due to the County errors or
21 unauthorized source code or data access by the County.
22 Unauthorized access to the data is defined as any County editing of
23 data through other than normal system usage as defined in System
24 Documentation. Unauthorized access to source code is defined as
25 any County access whatsoever to system source code. Services
26 provided by the Contractor are not billable when they result from
27 errors caused by MPDS or instruction provided by the Contractor.
28

Exhibit A

1 **iii. Customer Site Visits:** Site visits to County sites, as may be
2 requested in writing by the County and that are within the scope of
3 the project services, are available for reasons such as, but not
4 limited to, (a) additional System training on hardware or software
5 usage; (b) resolution of System difficulties not resulting from actions
6 by, or otherwise the responsibility of the Contractor (as determined
7 by mutual agreement between the Contractor and the County; (c)
8 installation of Software Releases; and (d) assistance in equipment
9 maintenance, movement, or diagnosis. Site visits outside the scope
10 of the project services will be reviewed by the Contractor and must
11 be requesting in writing in advance by the County Contract
12 Administrator. Charges will be at rates identified in this Agreement
13 Exhibit B.

14 **E. Contractor Project Coordinator.:** Upon execution of this Agreement, The
15 Contractor shall appoint a Project Coordinator who will act as the primary
16 contact person to interface with the County for implementation, maintenance
17 and support of MPDS.

18 **F. System Updates and New Products**

19 **i. System Updates:** From time to time the Contractor will develop and
20 provide System Updates to the County for the County's licensed the
21 Contractor software. System Updates shall be subject to the terms
22 and conditions of this Agreement and shall be deemed licensed
23 System Software hereunder and will be made available to the
24 County as set forth in Exhibit A. System Updates will be made
25 available to the County at the discretion of the Contractor but will not
26 be unreasonably withheld.

27 **ii. New Products:** The Contractor may from time to time release new
28 software with capabilities substantially different from or greater than

Exhibit A

1 the System Software ("New Products") and which therefore do not
2 constitute System Updates. These New Products will be made
3 available to the County at a cost not to exceed The Contractor's
4 then standard rates for customers similarly situated.

5 **iii. Operating System Updates:** The application must run on an
6 operating system (O/S) that is consistently and currently supported
7 by the operating system vendor. Applications under maintenance
8 are expected to always be within 1 year of current in regards to the
9 O/S. Outdated or unsupported O/S will not be implemented on the
10 production network. With approval from the Contractor, The County
11 will apply patches to both the operating system, and security
12 subsystems as releases are available from operating system
13 vendors. The application is expected to perform in this environment.
14 The Contractor is expected to keep their software within 1 year of
15 current in order to operate in this environment. These patches
16 include critical O/S updates and security patches.

17 **iv. Anti-Virus Management:** The County will actively run anti-virus
18 management, where appropriate, on all application servers and
19 PCs. The application is expected to perform adequately while anti-
20 virus management is active. While installing or implementing the
21 Software Systems it may become necessary for the County to turn
22 off or shut down its anti-virus program to adequately allow the
23 Software Systems to install.

24 **v. Adhere to the Change Control Process:** The Contractor must
25 adhere to the County's Change Control Process, which shall be
26 provided to the Contractor in writing. The County employs a
27 procedure to implement updates, upgrades, and version releases to
28 a system that is in production use. This forum allows the County's

Exhibit A

1 Internal Services Department, Information Technology Services
2 Division (ISD-IT) to inform staff (Help Desk, Network, Server,
3 Database, Security, and Analysts) of upcoming changes to a
4 production system. The Contractor must inform ISD-IT a minimum
5 of one (1) week prior to any planned, non-emergency changes so
6 that the Change Control Process may be followed. In order to inform
7 ISD-IT, ISD-IT must sign up for notifications as set forth in
8 Attachment.

9 **III. Obligations of the County**

10 **A. County Contract Administrator:** The County shall appoint the Chief
11 Information Officer (CIO) or his designee as the County's Contract
12 Administrator with full authority to deal with the Contractor in all matters
13 concerning this Agreement.

14 **B. Safeguarding System Software:** The County will follow its present practices
15 to safeguard System Software delivered to the County by the Contractor. A
16 copy of the County's "Information Technology (IT) Standards and
17 Preferences" will be made available upon request.

18 **C. Backup and Recovery Management**

- 19 **i.** The County utilizes a backup and recovery system written and
20 maintained by Commvault Systems. This application requires a
21 backup agent to run on the server.
- 22 **ii.** The County will provide the Contractor with an account with
23 approximate administrative rights to administer the application. The
24 account password is expected to periodically expire.
- 25 **iii.** In order for the application to run on the County supported servers,
26 the application must not require the users to have administrative
27 rights on the servers.
- 28

Exhibit A

- 1 **iv.** The County, at all times, during and after the performance of the
2 installation of the System Software, is responsible for maintaining
3 adequate backups to protect against loss of data.

4 **D. System Hardware and System Software:** The County will at its own
5 expense provide and properly maintain and update on an on-going basis all
6 necessary the County System Software and the County System Hardware
7 required to operate MPDS. Said County System Software and the County
8 System Hardware shall meet or exceed the Contractor's recommendations.
9 As part of the County's responsibility for computer infrastructure, the County
10 is responsible for ensuring that data is secure and protected at all times. The
11 Contractor is not responsible for and cannot be held liable for inadvertent
12 data disclosure or theft from the County facilities.

13 **E. County Project Manager:** Upon execution of this Agreement, the County's
14 Contract Administrator shall designate one individual from ISD-IT who will
15 function as Project Manager with responsibility for day-to-day management of
16 the project for implementation of MPDS. The Project Manager and the
17 County personnel shall have the necessary and appropriate training and
18 experience to implement the terms of this Agreement. The County
19 acknowledges the Contractor's reliance on same.

20 **F. Other County Obligations**

- 21 **i.** The County agrees to comply with the terms of Exhibit F, attached
22 hereto and by this reference incorporated herein.
- 23 **ii.** Technical assistance from the County's Information Technology staff
24 will be provided during the performance of the installation of the
25 System Software. In particular, the County will provide:
- 26 • Network connectivity and troubleshooting assistance.
 - 27 • Ability to monitor network traffic and isolate bottlenecks.
- 28

Exhibit A

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- Technical assistance concerning the integration with existing County systems (if applicable).
 - Expertise to handle issues with PCs, printers, and cabling before, during, and after rollout.
- iii.** Unless otherwise specified, for third-party software, the Contractor shall provide standard documentation in electronic form (via the Internet or File Transfer Protocol (“FTP”)).
- iv.** The System being provided runs in a Local Area Network and Web environment. As such, the performance of the System is directly related to, among other things: available network bandwidth, and the performance of other applications. For this reason, the Contractor makes no guarantees as to System response time.

Exhibit B

Compensation

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

Year	Item	Total Cost per Year
Year 1	<i>Priority Dispatch System Annual Maintenance (P) License Renewal, Service, & Support</i>	\$92,400
Year 2	<i>Priority Dispatch System Annual Maintenance (P) License Renewal, Service, & Support</i>	\$92,400
Year 3	<i>Priority Dispatch System Annual Maintenance (P) License Renewal, Service, & Support</i>	\$92,400
Year 4	<i>Priority Dispatch System Annual Maintenance (P) License Renewal, Service, & Support</i>	\$92,400
Year 5	<i>Priority Dispatch System Annual Maintenance (P) License Renewal, Service, & Support</i>	\$92,400

Pricing for Optional Products/Services (Not to Exceed 40k per year)

Item	Price per Item
<i>ProQA License Production</i>	\$ 4,675
<i>ProQA Training License</i>	\$ 2,350
<i>AQUA License</i>	\$2,750
<i>Cardsets</i>	\$545
<i>ESP – ProQA License Production</i>	\$1,400
<i>ESP-- AQUA</i>	\$0.00
<i>ESP -- Cardset</i>	\$0.00
<i>Training Onsite (Daily Rate)</i>	\$2,750
<i>All Software Updates</i>	\$0.00

Exhibit C

Self-Dealing Transaction Disclosure Form

In order to conduct business with the County of Fresno ("County"), members of a contractor's board of directors ("County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest."

The definition above will be used for purposes of completing this disclosure form.

Instructions

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.

The form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

Exhibit C

(1) Company Board Member Information:			
Name:	N/A	Date:	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to)			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code § 5233 (a)			
(5) Authorized Signature			
Signature:		Date:	

Exhibit D

Insurance Requirements

1. Required Policies

Without limiting the County's right to obtain indemnification from the Contractor or any third parties, the 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. 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.
- (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) **Professional Liability.** Professional liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Three Million Dollars (\$3,000,000). If this is a claims-made policy, then (1) the retroactive date must be prior to the date on which services began under this Agreement; (2) the Contractor shall maintain the policy and provide to the County annual evidence of insurance for not less than five years after completion of services under this Agreement; and (3) if the policy is canceled or not renewed, and not replaced with another claims-made policy with a retroactive date prior to the date on which services begin under this Agreement, then the Contractor shall purchase extended reporting coverage on its claims-made policy for a minimum of five years after completion of services under this Agreement.
- (F) **Excess/Umbrella Insurance:** A combination of primary and excess/umbrella insurance may be used by the Contractor to meet the required limits of insurance.
- (G) **Technology Professional Liability (Errors and Omissions).** Technology professional liability (errors and omissions) insurance with limits of not less than One Million Dollars (\$1,000,000) 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.

Exhibit D

(H) **Cyber Liability.** Cyber liability insurance with limits of not less than One Million Dollars (\$1,000,000) 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) breach of any of the Contractor's obligations under Exhibit E of this Agreement; (iv) system failure; (v) data recovery; (vi) failure to timely disclose data breach or Security Breach; (vii) failure to comply with privacy policy; (viii) payment card liabilities and costs; (ix) infringement of intellectual property, including but not limited to infringement of copyright, trademark, and trade dress; (x) invasion of privacy, including release of private information; (xi) information theft; (xii) damage to or destruction or alteration of electronic information; (xiii) cyber extortion; (xiv) extortion related to the Contractor's obligations under this Agreement regarding electronic information, including Personal Information; (xv) fraudulent instruction; (xvi) funds transfer fraud; (xvii) telephone fraud; (xviii) network security; (xix) data breach response costs, including Security Breach response costs; (xx) regulatory fines and penalties related to the Contractor's obligations under this Agreement regarding electronic information, including Personal Information; and (xxi) credit monitoring expenses.

2. Additional Requirements

(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's Risk Manager or the County Administrative Office, the Contractor shall deliver, or cause its broker or producer to deliver, to the County Risk Manager, at 2220 Tulare Street, 16th Floor, Fresno, California 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) 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

Exhibit D

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 professional liability insurance certificate, if it is a claims-made policy, must also state the retroactive date of the policy, which must be prior to the date on which services began under this Agreement.
- (v) 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.
- (vi) 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 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 as required in this paragraph. For cancellation of the policy for nonpayment of premium, the Contractor 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, the Contractor 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 the Contractor 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 the Contractor 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, the Contractor shall deliver, or cause its broker or producer to deliver, to the County's Risk 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.** 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

Exhibit D

waiver, but the Contractor's waiver of subrogation under this paragraph is effective whether or not the Contractor obtains such an endorsement.

- (F) **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.
- (G) **Subcontractors.** The Contractor shall require and verify that all subcontractors used by the Contractor to provide services under this Agreement maintain insurance meeting all insurance requirements provided in this Agreement. This paragraph does not authorize the Contractor to provide services under this Agreement using subcontractors.

Exhibit E

Data Security

A. Definitions.

Capitalized terms used in this Exhibit E have the meanings set forth in this section A.

“Authorized Employees” means the Contractor’s employees who have access to Personal Information.

“Authorized Persons” means: (i) any and all Authorized Employees; and (ii) any and all of the Contractor’s subcontractors, representatives, agents, outsourcers, and consultants, and providers of professional services to the Contractor, who have access to Personal Information and are bound by law or in writing by confidentiality obligations sufficient to protect Personal Information in accordance with the terms of this Exhibit E.

“Director” means the County’s Director of Internal Services/Chief Information Officer or his or her designee.

“Disclose” or any derivative of that word means to disclose, release, transfer, disseminate, or otherwise provide access to or communicate all or any part of any Personal Information orally, in writing, or by electronic or any other means to any person.

“Person” means any natural person, corporation, partnership, limited liability company, firm, or association.

“Personal Information” means any and all information, including any data provided, or to which access is provided, to the Contractor by or upon the authorization of the County, including but not limited to vital records, that: (i) identifies, describes, or relates to, or is associated with, or is capable of being used to identify, describe, or relate to, or associate with, a person (including, without limitation, names, physical descriptions, signatures, addresses, telephone numbers, e-mail addresses, education, financial matters, employment history, and other unique identifiers, as well as statements made by or attributable to the person); (ii) is used or is capable of being used to authenticate a person (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or personal identification numbers (PINs), financial account numbers, credit report information, answers to security questions, and other personal identifiers); or is personal information within the meaning of California Civil Code section 1798.3, subdivision (a), or 1798.80, subdivision (e).

Exhibit E

Personal Information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

“Privacy Practices Complaint” means a complaint received by the County relating to the Contractor’s (or any Authorized Person’s) privacy practices, or alleging a Security Breach. Such complaint shall have sufficient detail to enable the Contractor to promptly investigate and take remedial action under this Exhibit E.

“Security Safeguards” means physical, technical, administrative or organizational security procedures and practices put in place by the Contractor (or any Authorized Persons) that relate to the protection of the security, confidentiality, value, or integrity of Personal Information. Security Safeguards shall satisfy the minimal requirements set forth in subsection C.(5) of this Exhibit E.

“Security Breach” means (i) any act or omission that compromises either the security, confidentiality, value, or integrity of any Personal Information or the Security Safeguards, or (ii) any unauthorized Use, Disclosure, or modification of, or any loss or destruction of, or any corruption of or damage to, any Personal Information.

“Use” or any derivative thereof means to receive, acquire, collect, apply, manipulate, employ, process, transmit, disseminate, access, store, disclose, or dispose of Personal Information.

B. Standard of Care.

(1) The Contractor acknowledges that, in the course of its engagement by the County under this Agreement, the Contractor, or any Authorized Persons, may Use Personal Information only as permitted in this Agreement.

(2) The Contractor acknowledges that Personal Information is deemed to be confidential information of, or owned by, the County (or persons from whom the County receives or has received Personal Information) and is not confidential information of, or owned or by, the Contractor, or any Authorized Persons. The Contractor further acknowledges that all right, title, and interest in or to the Personal Information remains in the County (or persons from whom the

Exhibit E

County receives or has received Personal Information) regardless of the Contractor's, or any Authorized Person's, Use of that Personal Information.

(3) The Contractor agrees and covenants in favor of the County that the Contractor shall:

- (i) keep and maintain all Personal Information in strict confidence, using such degree of care under this Subsection B as is reasonable and appropriate to avoid a Security Breach;
- (ii) Use Personal Information exclusively for the purposes for which the Personal Information is made accessible to the Contractor pursuant to the terms of this Exhibit E;
- (iii) not Use, Disclose, sell, rent, license, or otherwise make available Personal Information for the Contractor's own purposes or for the benefit of anyone other than the County, without the County's express prior written consent, which the County may give or withhold in its sole and absolute discretion; and
- (iv) not, directly or indirectly, Disclose Personal Information to any person (an "Unauthorized Third Party") other than Authorized Persons pursuant to this Agreement, without the Director's express prior written consent.

Notwithstanding the foregoing paragraph, in any case in which the Contractor believes it, or any Authorized Person, is required to disclose Personal Information to government regulatory authorities, or pursuant to a legal proceeding, or otherwise as may be required by applicable law, the Contractor shall (a) immediately notify the County of the specific demand for, and legal authority for the disclosure, including providing the County with a copy of any notice, discovery demand, subpoena, or order, as applicable, received by the Contractor, or any Authorized Person, from any government regulatory authorities, or in relation to any legal proceeding, and (b) promptly notify the County before such Personal Information is offered by the Contractor for

such disclosure so that the County may have sufficient time to obtain a court order or take any other action the County may deem necessary to protect the Personal Information from such disclosure, and the Contractor shall cooperate with the County to minimize the scope of such disclosure of such Personal Information.

Exhibit E

The Contractor shall remain liable to the County for the actions and omissions of any Unauthorized Third Party concerning its Use of such Personal Information as if they were the Contractor's own actions and omissions.

C. Information Security.

(1) The Contractor covenants, represents and warrants to the County that the Contractor's Use of Personal Information under this Agreement does and shall at all times comply with all federal, state, and local, privacy and data protection laws, as well as all other applicable regulations and directives, including but not limited to California Civil Code, Division 3, Part 4, Title 1.81 (beginning with section 1798.80), and the Song-Beverly Credit Card Act of 1971 (California Civil Code, Division 3, Part 4, Title 1.3, beginning with section 1747). If the Contractor Uses credit, debit, or other payment cardholder information, the Contractor shall at all times remain in compliance with the Payment Card Industry Data Security Standard ("PCI DSS") requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing and maintaining all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at the Contractor's sole cost and expense.

(2) The Contractor covenants, represents and warrants to the County that, as of the Effective Date, the Contractor has not received notice of any violation of any privacy or data protection laws, as well as any other applicable regulations or directives, and is not the subject of any pending legal action or investigation by, any government regulatory authority regarding same.

(3) Without limiting the Contractor's obligations under subsection C.(1) of this Exhibit E, the Contractor's (or Authorized Person's) Security Safeguards shall be no less rigorous than accepted industry practices and, at a minimum, include the following: (i) limiting Use of Personal Information strictly to the Contractor's and Authorized Persons' technical and administrative personnel who are necessary for the Contractor's, or Authorized Persons', Use of the Personal Information pursuant to this Agreement; (ii) ensuring that all of the Contractor's connectivity to the County computing systems will only be through the County's security

Exhibit E

gateways and firewalls, and only through security procedures approved upon the express prior written consent of the Director; (iii) to the extent that they contain or provide access to Personal Information, (a) securing the Contractor's business facilities, data centers, paper files, servers, back-up systems and computing equipment, operating systems, and software applications, including, but not limited to, all mobile devices and other equipment, operating systems, and software applications with information storage capability; (b) employing adequate controls and data security measures with respect to the Contractor Facilities and Equipment), both internally and externally, to protect (1) the Personal Information from potential loss or misappropriation, or unauthorized Use, and (2) the County's operations from disruption and abuse; (c) having and maintaining network, device application, database and platform security; (d) maintaining authentication and access controls within media, computing equipment, operating systems, and software applications; and (e) installing and maintaining in all mobile, wireless, or handheld devices a secure internet connection, having continuously updated anti-virus software protection and a remote wipe feature always enabled, all of which is subject to express prior written consent of the Director; (iv) encrypting all Personal Information at advance encryption standards of Advanced Encryption Standards (AES) of 128 bit or higher (a) stored on any mobile devices, including but not limited to hard disks, portable storage devices, or remote installation, or (b) transmitted over public or wireless networks (the encrypted Personal Information must be subject to password or pass phrase, and be stored on a secure server and transferred by means of a Virtual Private Network (VPN) connection, or another type of secure connection, all of which is subject to express prior written consent of the Director); (v) strictly segregating Personal

Information from all other information of the Contractor, including any Authorized Person, or anyone with whom the Contractor or any Authorized Person deals so that Personal Information is not commingled with any other types of information; (vi) having a patch management process including installation of all operating system/software vendor security patches; (vii) maintaining appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks of Authorized Employees consistent

Exhibit E

with applicable law; and (viii) providing appropriate privacy and information security training to Authorized Employees.

(4) During the term of each Authorized Employee's employment by the Contractor, the Contractor shall cause such Authorized Employees to abide strictly by the Contractor's obligations under this Exhibit E. The Contractor further agrees that it shall maintain a disciplinary process to address any unauthorized Use of Personal Information by any Authorized Employees.

(5) The Contractor shall, in a secure manner, backup daily, or more frequently if it is the Contractor's practice to do so more frequently, Personal Information received from the County, and the County shall have immediate, real time access, at all times, to such backups via a secure, remote access connection provided by the Contractor, through the Internet.

(6) The Contractor shall provide the County with the name and contact information for each Authorized Employee (including such Authorized Employee's work shift, and at least one alternate Authorized Employee for each Authorized Employee during such work shift) who shall serve as the County's primary security contact with the Contractor and shall be available to assist the County 24 hours per day, seven days per week as a contact in resolving the Contractor's and any Authorized Persons' obligations associated with a Security Breach or a Privacy Practices Complaint.

D. Security Breach Procedures.

(1) Promptly, and without undue delay, upon the Contractor's confirmation of a Security Breach, the Contractor shall (a) notify the Director of the Security Breach, such notice to be given first by telephone at the following telephone number, followed promptly by email at the following email address: (559) 600-5900/incidents@fresnocountyca.gov (which telephone number and email address the County may update by providing notice to the Contractor), and (b) preserve all relevant evidence (and cause any affected Authorized Person to preserve all relevant evidence) relating to the Security Breach. The notification shall include, to the extent reasonably possible, the identification of each type and the extent of Personal Information that has been, or is reasonably believed to have been, breached, including but not limited to,

Exhibit E

compromised, or subjected to unauthorized Use, Disclosure, or modification, or any loss or destruction, corruption, or damage.

(2) Immediately following the Contractor's notification to the County of a Security Breach, as provided pursuant to subsection D.(1) of this Exhibit E, the Parties shall coordinate with each other to investigate the Security Breach. The Contractor agrees to fully cooperate with the County, including, without limitation: (i) assisting the County in conducting any investigation; (ii) providing the County with physical access to the facilities and operations affected; (iii) facilitating interviews with Authorized Persons and any of the Contractor's other employees knowledgeable of the matter; and (iv) making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law, regulation, industry standards, or as otherwise reasonably required by the County. To that end, the Contractor shall, with respect to a Security Breach, be solely responsible, at its cost, for all notifications required by law and regulation, and the Contractor shall provide a written report of the investigation and reporting required to the Director within 30 days after the Contractor's discovery of the Security Breach.

(3) The County shall promptly notify the Contractor of the Director's knowledge, or reasonable belief, of any Privacy Practices Complaint, and upon the Contractor's receipt of notification thereof, the Contractor shall promptly address such Privacy Practices Complaint, including taking any corrective action under this Exhibit E, all at the Contractor's sole expense, in accordance with applicable privacy rights, laws, regulations and standards. In the event the Contractor discovers a Security Breach, the Contractor shall treat the Privacy Practices Complaint as a Security Breach. Within 24 hours of the Contractor's receipt of notification of such Privacy Practices Complaint, the Contractor shall notify the County whether the matter is a Security Breach, or otherwise has been corrected and the manner of correction, or determined not to require corrective action and the reason therefor.

(4) The Contractor shall take prompt corrective action to respond to and remedy any Security Breach and take reasonable mitigating actions, including but not limiting to, preventing any reoccurrence of the Security Breach and correcting any deficiency in Security Safeguards as a result of such incident, all at the Contractor's sole expense, in accordance with applicable

Exhibit E

privacy rights, laws, regulations and standards. The Contractor shall reimburse the County for all reasonable costs incurred by the County in responding to, and mitigating damages caused by, any Security Breach, including all costs of the County incurred in relation to any litigation or other action described in subsection D.(5) of this Exhibit E to the extent applicable: (1) the cost of providing affected individuals with credit monitoring services for a specific period not to exceed 12 months, to the extent the incident could lead to a compromise of the data subject's credit or credit standing; (2) call center support for such affected individuals for a specific period not to exceed 30 days; and (3) the cost of any measures required under applicable laws.

E. Oversight of Security Compliance.

(1) The Contractor shall have and maintain a written information security policy that specifies Security Safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities.

(2) Upon the County's written request, to confirm the Contractor's compliance with this Exhibit E, as well as any applicable laws, regulations and industry standards, the Contractor grants the County or, upon the County's election, a third party on the County's behalf, permission to perform an assessment, audit, examination or review of all controls in the Contractor's physical and technical environment in relation to all Personal Information that is Used by the Contractor pursuant to this Agreement. The Contractor shall fully cooperate with such assessment, audit or examination, as applicable, by providing the County or the third party on the County's behalf, access to all Authorized Employees and other knowledgeable personnel, physical premises, documentation, infrastructure and application software that is Used by the Contractor for Personal Information pursuant to this Agreement. In addition, the Contractor shall provide the County with the results of any audit by or on behalf of the Contractor that assesses the effectiveness of the Contractor's information security program as relevant to the security and confidentiality of Personal Information Used by the Contractor or Authorized Persons during the course of this Agreement under this Exhibit E.

(3) The Contractor shall ensure that all Authorized Persons who Use Personal Information agree to the same restrictions and conditions in this Exhibit E. that apply to the

Exhibit E

Contractor with respect to such Personal Information by incorporating the relevant provisions of these provisions into a valid and binding written agreement between the Contractor and such Authorized Persons, or amending any written agreements to provide same.

F. Return or Destruction of Personal Information.

Upon the termination of this Agreement, the Contractor shall, and shall instruct all Authorized Persons to, promptly return to the County all Personal Information, whether in written, electronic or other form or media, in its possession or the possession of such Authorized Persons, in a machine readable form used by the County at the time of such return, or upon the express prior written consent of the Director, securely destroy all such Personal Information, and certify in writing to the County that such Personal Information have been returned to the County or disposed of securely, as applicable. If the Contractor is authorized to dispose of any such Personal Information, as provided in this Exhibit E, such certification shall state the date, time,

and manner (including standard) of disposal and by whom, specifying the title of the individual. The Contractor shall comply with all reasonable directions provided by the Director with respect to the return or disposal of Personal Information and copies thereof. If return or disposal of such Personal Information or copies of Personal Information is not feasible, the Contractor shall notify the County accordingly, specifying the reason, and continue to extend the protections of this Exhibit E to all such Personal Information and copies of Personal Information. The Contractor shall not retain any copy of any Personal Information after returning or disposing of Personal Information as required by this section F. The Contractor's obligations under this section F survive the termination of this Agreement and apply to all Personal Information that the Contractor retains if return or disposal is not feasible and to all Personal Information that the Contractor may later discover.

G. Equitable Relief.

The Contractor acknowledges that any breach of its covenants or obligations set forth in this Exhibit E may cause the County irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach,

Exhibit E

the County is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which the County may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available to the County at law or in equity or under this Agreement.

H. Indemnification.

The Contractor shall defend, indemnify and hold harmless the County, its officers, employees, and agents, (each, a “**County Indemnitee**”) from and against any and all infringement of intellectual property including, but not limited to infringement of copyright, trademark, and trade dress, invasion of privacy, information theft, and extortion, unauthorized Use, Disclosure, or modification of, or any loss or destruction of, or any corruption of or damage to, Personal Information, Security Breach response and remedy costs, credit monitoring expenses, forfeitures, losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, fines, and penalties (including regulatory fines and penalties), costs or expenses of whatever kind, including attorney’s fees and costs, the cost of enforcing any right to indemnification or defense under the Agreement and the cost of pursuing any insurance providers, arising out of or resulting from any third party claim or action against any County Indemnitee in relation to the Contractor’s, its officers, employees, or agents, or any Authorized Employee’s or Authorized Person’s, performance or failure to perform under this Exhibit E or arising out of or resulting from the Contractor’s failure to comply with any of its obligations under this section H. The provisions of this section H do not apply to the acts or omissions of the County. The provisions of this section H are cumulative to any other obligation of the Contractor to, defend, indemnify, or hold harmless any County Indemnity under this Agreement. The provisions of this section H shall survive the termination of this Agreement.

I. Survival.

The respective rights and obligations of the Contractor and the County as stated in this Exhibit E shall survive the termination of this Agreement.

J. No Third Party Beneficiary.

Exhibit E

Nothing express or implied in the provisions of in this Exhibit E is intended to confer, nor shall anything herein confer, upon any person other than the County or the Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.

L. No County Warranty.

The County does not make any warranty or representation whether any Personal Information in the Contractor's (or any Authorized Person's) possession or control or Use by the Contractor (or any Authorized Person), pursuant to the terms of this Agreement is or will be secure from unauthorized Use, or a Security Breach or Privacy Practices Complaint.

Exhibit F

End User License Agreement

1. Software means the Priority Dispatch System ("PDS") software, content, and/or manual flip cards that YOU (henceforth, County of Fresno) receive from PDC in connection with this Agreement and as further identified in Customer's invoice or quote from PDC, regardless of the medium on which it is stored. Documentation means any and all manuals, instructions and other documents and materials that PDC provides or makes available to Customer in any form or medium in relation to the Software. Whenever the context reasonably permits, any reference in this Agreement to "Software" shall also apply to the PDS and to the Documentation, which together comprise the Licensed Product. Except as provided below, in the section entitled "Limited Software Warranty," any Updates to the Software received by YOU from PDC shall be included in this definition of Software and covered by this Agreement. User rights to the Software are obtained only from PDC, by license agreement with PDC.

2. A PDC Product. The Software (including its content) and any and all copies thereof and derivatives therefrom are owned by PDC or its Licensor(s) (altogether "PDC"). YOU acknowledge that PDC owns the copyrights, patent rights, trade secrets, trademarks and other intellectual property rights in and to the Software. License fees purchase only the limited License provided in this Agreement. YOU agree not to infringe upon any of these exclusive intellectual property rights of PDC and that YOU will not attempt to record or register any of them for any party. Copies of the Software are loaned to YOU by PDC for the duration of the License only, and only for the purpose of enabling YOU to exercise YOUR License rights (see also, section entitled "Termination").

3. Stations, Licensed Stations, Number of Licensed Stations. "Stations" are computers, terminals, nodes, computer aided dispatch stations, or workstations in YOUR possession and/or control. "Licensed Stations" are YOUR Stations that have access to the Software and for which YOU have paid the applicable License Fee to PDC for this License to use the Software. The "Number of Licensed Stations" is specified in YOUR License Fee invoice or quote from PDC. YOU may not use the Software in connection with any Stations (or any other computers, terminals, nodes or workstations) other than the Licensed Stations, and the number of Stations using or having access to the Software shall at no time exceed the Number of Licensed Stations. "Training Stations" are Stations that have access to the Software but are dedicated to the purpose of training personnel on the use of computerized functions in the call-center, and may not be used to take real or live calls. "Backup Stations" are Stations that have access to the

Exhibit F

Software but have been designated as backup stations for emergency contingency use only. Backup Stations are separate and independent from the Licensed Stations, and shall not run concurrent functions with the Licensed Stations. Backup Stations are only licensed to be used in circumstances when the Licensed Stations are rendered inoperable.

4. License of Software. PDC grants to Customer a nonexclusive, non-transferable limited license (the "License") to use the Software on the Number of Licensed Stations. This License also authorizes YOU to use the Documentation, but only in connection with YOUR licensed use of the Software. The Term of the License begins on the date YOU receive the Software and accept this Agreement. Rights not expressly granted to YOU under this Agreement are reserved by PDC.

5. License Fee. YOU shall pay PDC the License Fee specified and in YOUR invoice from PDC when the License is purchased, and the ESP fee annually thereafter. Any increase in the Number of Licensed Stations will require the payment of additional license fees to PDC at its then-current rate for incremental Licensed Stations for the Software.

6. Copies & Use. YOU may copy Software for reasonable archival or back-up purposes. All trademark, copyright and proprietary rights notices must be reproduced by YOU and included on all copies. U.S. law, international law and treaties, and this Agreement all prohibit YOU from making any other copies; or from making any derivatives of the Software, system protocols, or anything in the PDS; or from making any use of the Software in any manner not licensed by this Agreement.

7. Use and Protection of the Licensed Product(s) and PDS. YOU are not entitled to receive any source code for the Software. Without PDC's express, prior written permission, YOU shall not: (a) decompile, disassemble, reverse engineer, or otherwise attempt to discover the source code or trade secrets of the Software, or alter the Software or create any derivative work or product based upon, or derived from the PDS, Software or Documentation; or (b) transfer, disclose, rent, lease, loan, publicly display, adapt, timeshare, sublicense, duplicate, distribute, translate, modify, or alter the Software or any copy thereof, including, without limitation, any deletion from or addition to the Software, or allow third party access to or use of the Software or any copy thereof in any manner; or (c) use the Software in any way not specifically provided under this license. Modification of the Software by implementing Updates provided by PDC under this Agreement, and by the addition of local response configurations to PDS dispatch codes (as provided for elsewhere in this Agreement) are not in breach of this section. YOU

Exhibit F

acknowledge that YOUR material breach of this Agreement would provide PDC the option to terminate this License and/or withhold Service and Support, and would also cause irreparable harm to PDC that could not be adequately compensated by damages alone. Consequently, PDC may seek and obtain, without posting any bond or providing any other security, immediate preliminary and permanent injunctions against YOUR breach or threatened breach of the Agreement, in addition to any and all other legal and equitable remedies available, and YOU hereby consent to the obtaining of such injunctive relief. In addition to other remedies that may be available to PDC, PDC shall be entitled to recover any profits made by YOU as a result of the breach of this Agreement or the infringement of its intellectual property. Any derivative product, whether created knowingly or unknowingly, shall be the property of PDC.

8. Extended Service Plan. This Agreement includes and incorporates the accompany Extended Service Plan (ESP) agreement as set forth below.

9. Taxes. Any sales, use, withholding and other taxes, duties or government assessments relating to this Agreement or the License, or to the payments or transactions hereunder, shall be paid by YOU, in addition to all other specific payments required to be made by YOU under this Agreement. If any taxes or amounts are withheld or deducted by any government or authority from any license fees or payments to PDC, YOU shall be obligated to pay the taxes or amounts withheld or deducted so that the license fees and payments actually received by PDC are the full amounts contemplated by this Agreement before such withholding or deduction. If necessary, the license fees and amounts shall be increased ("grossed up") so that the license fees and payments actually received by PDC after such withholding and deductions are the full amounts. This section does not apply to U.S. federal or state taxes that may be imposed upon PDC on the basis of net corporate income.

10. Use of Software; Updates. YOU may only use the Software in compliance with this Agreement and the Documentation. PDC may issue Updates or revisions to the Software and bulletins or advisories concerning use of the Software (see also, "Updates" in the ESP). YOUR failure to implement such PDC-provided Updates or revisions within 90-days of PDC providing same to YOU will constitute a material breach of this Agreement, giving PDC the right to terminate the License for cause and/or to withhold further Service and Support, and YOU hereby agree to indemnify and hold PDC and the IAED harmless from and against any damages and liabilities that may arise from failure on YOUR part to implement such Updates (see also, ESP Section titled "Unsafe Practices"). Updates to the Software received by YOU from PDC shall be covered as "Software" under this Agreement, as provided above, in the

Exhibit F

section of this Agreement entitled "Software." An exception to this general rule is provided immediately below with respect to refunds, in the section entitled "Limited Software Warranty."

11. Limited Software Warranty. PDC warrants that if the Software does not materially conform with its descriptions in the Documentation and PDC's published specifications, and if YOU report in writing to PDC within 30 days after delivery of the Software to YOU any material failure of the Software to so conform with the Documentation or specifications, then PDC will, at its sole option, and at no cost to YOU, either: (a) remedy the failure or provide a reasonable work-around solution; or (b) offer to refund License Fees and any pre-paid fees for ESP that have been received by PDC for the non-conforming Software. The refund offer does not apply to free Software Updates provided by PDC under this Agreement. If a refund is offered, YOU will have 20 days from the date of the offer to either accept the refund or accept the Software "as-is." If YOU elect to accept the Software as-is, then PDC's warranties will be deemed satisfied and this Agreement will not terminate. If YOU accept the refund offer, YOU must return the must certify in writing to PDC that YOU have not retained in YOUR possession or control, any copies of the Software and that YOU have not transferred or disclosed any Software to any third party. Then PDC will refund to YOU the License Fee and any prepaid ESP Fees received by PDC from YOU hereunder. THIS SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY AND PDC'S SOLE AND EXCLUSIVE LIABILITY WITH RESPECT TO ANY BREACH OF THIS WARRANTY.

12. Inspection. PDC may, from time to time and at its own expense and option, inspect YOUR facilities and records to audit YOUR compliance with this Agreement. Although not obligated to so, PDC may inform YOU of any improper, unauthorized or unsafe usage of the Software. 10 are informed of any such misuse of the Software and fail to correct it to PDC's reasonable satisfaction within 30-days of written notice from PDC, then PDC may terminate the License. In addition, if YOU develop, market, or otherwise use a competing or alternative dispatch product, YOU expressly authorize PDC to enter YOUR facilities to inspect and evaluate the competing or alternative product to determine if any of PDC's intellectual property or intellectual property right are being violated.

13. DISCLAIMER OF OTHER PDC WARRANTIES. PDC MAKES NO WARRANTY, REPRESENTATION OR PROMISE NOT EXPRESSLY SET FORTH IN THIS AGREEMENT. EXCEPT FOR THE LIMITED WARRANTY, SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. PDC DISCLAIMS AND EXCLUDES ANY AND ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. PDC DOES NOT WARRANT

Exhibit F

THAT THE SOFTWARE OR DOCUMENTATION WILL SATISFY YOUR REQUIREMENTS OR THAT THEY ARE WITHOUT ERROR, OMISSION, DEFECT OR DEFICIENCY, OR THAT THE OPERATION OF SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE.

14. LIMITATION ON PDC LIABILITY. THE AGGREGATE LIABILITY OF PDC ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SOFTWARE, REGARDLESS OF THE FORM OF ACTION OR CLAIM, WHETHER CONTRACT, WARRANTY, TORT, STRICT LIABILITY MALPRACTICE, INDEMNITY, AND/OR OTHERWISE, AND WHETHER OR NOT ARISING IN WHOLE OR IN PART FROM PDC'S FAULT, NEGLIGENCE, STRICT LIABILITY, OR PRODUCT LIABILITY, SHALL NOT EXCEED THE AMOUNT OF THE SOFTWARE LICENSE FEE PAID BY YOU TO PDC DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING SUCH CLAIM. PDC SHALL NOT IN ANY CASE BE LIABLE FOR ANY, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES, EVEN IF PDC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PDC SHALL NOT BE LIABLE TO ANY THIRD PARTY FOR ANY CLAIM, LIABILITY OR DAMAGES RESULTING FROM OR RELATING TO YOUR USE OF THE SOFTWARE OR ANY RELIANCE THEREON. PDC IS NOT RESPONSIBLE FOR LOST PROFITS OR REVENUE, LOSS OF USE OF THE SOFTWARE OR OTHER COMPUTER PROGRAMS, FAILURE OF THE SOFTWARE TO OPERATE WITHOUT INTERRUPTION, LOSS OF DATA, COSTS OF RE-CREATING LOST DATA, OR THE COST OF ANY SUBSTITUTE EQUIPMENT OR PROGRAM. THE OFFICERS, DIRECTORS, EMPLOYEES AND REPRESENTATIVES OF PDC ARE NOT PARTIES TO THIS AGREEMENT AND SHALL HAVE NO LIABILITY RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER. EXCEPT FOR THE LIMITED WARRANTY, PDC MAKES NO WARRANTY CONCERNING THE SOFTWARE, AND PDC SHALL NOT OTHERWISE BE LIABLE FOR ANY NONCONFORMITY IN THE SOFTWARE OR IN THE PDS. FOR THE SAKE OF CLARIFICATION, IT IS UNDERSTOOD BY YOU THAT PDC DOES NOT GUARANTEE, NOR INDEMNIFY, NOR SHALL PDC HOLD ANY PARTY HARMLESS TO ANY USE OF OR RELIANCE UPON THE DISPATCH PROTOCOLS CONTAINED IN THE SOFTWARE.

15. RESPONSIBILITY. IT IS YOUR RESPONSIBILITY TO EXAMINE AND TEST THE SOFTWARE AFTER IT IS DELIVERED TO YOU TO DETERMINE IF IT IS ACCEPTABLE TO YOU AND ADEQUATE AND SAFE FOR YOUR NEEDS AND USES. YOU ARE SOLELY RESPONSIBLE AND LIABLE FOR YOUR USE OF AND RELIANCE ON THE SOFTWARE. YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE ESP, AND THAT THE LICENSE IS CONDITIONED

Exhibit F

ON YOUR REPRESENTATION TO PDC THAT YOU HAVE ACCEPTED AND AGREE TO BE BOUND BY THIS AGREEMENT AND THESE PROVISIONS AND DISCLAIMERS.

16. ALLOCATION OF RISK. THIS AGREEMENT DEFINES A MUTUALLY AGREED-UPON ALLOCATION OF RISK, AND THE FEES PAYABLE HEREUNDER REFLECT SUCH ALLOCATION OF RISK.

17. Termination. Termination of this Agreement shall be in accordance with Section 4f of the Agreement. Subsequent to termination the decommission process shall take place as follows:
(a) Decommission Process. Decommissioning of the PDS can be very extensive. Customer shall contact PDC at least 90-days before Customer plans on using an alternative dispatch product. At that point, PDC shall provide Customer with more detailed information regarding the decommission process. Part of the Decommission process will involve collecting PDC intellectual Property and exporting PDS data in a format that will give Customer access to historical records. In order to successfully decommission the PDS, Customer understands that PDC will come on site at their location and Customer must provide a dedicated person (general an I.T. person) to PDC to allow for the successful decommissioning of the PDS. After the decommission process, any PDC products, intellectual property, or materials found shall be immediately forwarded to PDC.

18. Export Controls. YOU warrant and certify the Software will not be exported, re-exported or otherwise made available by YOU to any country, entity, or individual in violation of any U.S. laws or regulations.

19. Construction. This Agreement represents the wording selected by the Parties to define their agreement and no rule of strict construction shall apply against either Party. Whenever the context reasonably permits, the singular shall include the plural, the plural shall include the singular, and the whole shall include any part thereof.

Extended Service Plan (“ESP”)

1. Extended Service Plans

- a. **Silver ESP:** Includes 24x7x365 technical support and Updates to the Software within the current version.

Exhibit F

- b. **Gold ESP:** Includes everything in the Silver package plus Upgrades to the Software and an annual subscription to the Continuing Dispatch Education Series/Advancement Series.
- c. **Platinum ESP:** Includes everything in the Gold package plus updated QAGs (Quality Assurance Guides), updated FRGs (Field Responder Guides), Cardsets, and a number of annual site visits. Site visits can be IT, CDE, software training, QA support, ACE application support, or implementation help, (the number of site visits is based on the number of Licensed Stations).
- d. **ESP Miscellaneous:**
 - i. Client must register as described in Section ii below.
 - ii. The annual ESP fees must be fully paid in advance. The ESP period is for one year and is renewed annually upon continued use of the Licensed Products.
 - iii. All Licensed Products that a Customer must have the same ESP.
 - iv. PDC reserves the right to terminate this Agreement if YOU are not current on YOUR financial obligations to PDC.

Customer Obligations:

- i. Customer's hardware and operating systems must meet the minimum system requirements provided by PDC.
- ii. Customer is solely responsible for any required adjustments or updates to its hardware or operating system software to accommodate Updates or Upgrades of the Software.
- iii. Customer shall ensure availability of its own technical support personnel so PDC can fulfill its service obligations.
- iv. When reporting a problem to PDC's technical support, Customer shall provide a complete problem description, along with all necessary documents and information that is available to the Customer and required by PDC to diagnose and resolve the problem. Customer agrees to grant all necessary access to all applicable systems so that PDC can provide appropriate support.
- v. Customer shall carry out any instructions on troubleshooting or circumvention as provided by PDC.

Exhibit F

- vi. Customer is solely responsible for ensuring the compatibility of non-PDC products with PDC products.
- vii. Customer is solely responsible for ensuring its systems, software, and data are adequately backed up. PDC shall not be liable for any lost data.
- viii. Customer shall provide for any other requirements reasonably specified by PDC that relate to the rendition of the services to be met.
- ix. As necessary, Customer will permit PDC with remote access to its systems to provide any required or necessary support.
- x. If Customer fails to fulfil its obligations outlines in this Section, PDC is entitled to bill its time and effort made necessary by Customer's failure(s) at PDC's currently stated hourly rates.
- xi. Computer-Aided Dispatch ("CAD") Integration. Any costs relating to the integration of PDC's Licensed products and the Customer's CAD system or CRM, or the like, software shall be the responsibility of the Customer. The integration of PDC's Licensed Products and Customer's CAD system must be inspected, tested, and certified, by PDC before taking live calls.

2. Update & New Versions: An important part of PDC's on-going research and development to optimize the effectiveness of the Software is its regular evaluation of the experience, findings, and recommendations of licensed Software users in the field; the College of Fellows of the International Academies of Emergency Dispatch ("IAED"); Quality Assurance programs; and of its own, internal research and studies. Consequent to these and other research and development activities, PDC may, from time to time, prepare and release Updates and/or New Versions of the Software. Notifications for Updates and/or New Versions of the Software are sent electronically (via email). In order to ensure receipt of the Software notifications, Client must register at <https://support.prioritydispatch.net/release-notification-signup> YOU acknowledge that failure to register may result in YOU not receiving urgent and vital communications about the Licensed Products. As part of its registration obligation, Client agrees to keep all its registration information current and up-to-date and understands it is solely responsible for ensuring it receives Software notifications.

- a. Updates:** When PDC determines that particular improvements, modifications or enhancements may be useful as an Update to the current Version, PDC may issue an Update to licensees who have maintained their online Software

Exhibit F

notification registration and ESP current as provided herein. Client shall, within 90 days of an Update release from PDC, implement such Update. Client's failure to register for Software notifications and implement Updates, as provided here, would constitute a Breach of the EULA, giving cause for PDC to terminate this Agreement or withhold further Service and Support. Such Updates may be accompanied by instructions for updating the Software. Installation of an Update in accordance with such instructions is not a modification prohibited by the section of the Agreement titled "Use and Protection of the Licensed Product(s) and PDS."

- b. **New Versions:** When PDC determines that substantial revisions to the Software (among other factors) may justify it, PDC may issue a new Version of the Software ("New Version"). PDC may thereafter cease issuing Updates for versions and editions preceding the New Version. Said New Version then becomes the current version and edition of the Software, but is not licensed to YOU, unless it is part of YOUR ESP plan. In the event New Versions are part of YOUR ESP plan, the New Version shall be governed by PDC's then-current license Agreement. If New Version are not part of YOUR ESP plan, then the New Version constitutes a new product that can only be obtained through the purchase of a new license from PDC that is licensed under a new agreement with PDC. During an introductory period, licensees who are current in their registration and service plan with the preceding version may be offered, for a reduced fee, a license to use the New Version. The New Version will be governed by PDC's then-current license agreement. tended Service will not be available indefinitely after a New Version of the Software is released to replace a prior version. Customers that continue to use prior versions after a New Version has been released are solely responsible for their continued use, and for the results obtained from such continued use, of any prior version. YOU hereby agree to indemnify and hold PDC and the IAED harmless from and against any damages and liabilities that may arise from YOUR election not to implement any New Version after it has been released.
3. **Responsibility:** Client assumes full responsibility for ascertaining the suitability of, and for its selection of, the Software, as well as for its installation, implementation and use, and for the results obtained from it. YOU are responsible for decisions made and actions

Exhibit F

taken based on the Software. The Software is designed and intended for use by emergency dispatch professionals trained and experienced in the uses and limitations of computer software in general, and more specifically, of the emergency dispatch system(s) the Software is designed for as a quality management tool.

- 4. Research Data Sharing:** In the interests of advancing the state-of-the-art in emergency dispatching through effective use of and improvements to the Software, Client shall, in timely response to PDC's reasonable written requests, provide PDC with copies, on disk or tape, of the data associated with the functioning of the Software. PDC shall use such data in compliance with applicable government regulations and restrictions (including, without limitation, HIPAA in the U.S.), and may use such data for research and development purposes. It will not make any external, public use or release of such research data without the prior written consent of Client. Furthermore, PDC will not request data in a manner that includes any names or personal identifying information or that indicates Client as the source of the data. Additionally, by sharing data with PDC, YOU allow PDC to share the data with the IAED for the purpose of improving and advancing dispatching
- 5. Expert System Disclosure:** This expert system is designed for use by Emergency Dispatchers or calltakers (EDs) who have been trained and certified in the use of the PDS and who function in a prescribed PDS quality assurance environment. It is not a novice system. The system design envisions occasions when even the trained ED will have to make a subjective decision regarding a caller's response and make the most correct selection from the list of choices presented. The design of this system incorporates current professional and logic accuracy. Of necessity, however, it also reflects some subjective opinions of professional experts and programmers with which others may reasonably disagree. The system and its necessary maintenance components must be considered and approved by local control entities and ED agency administration, prior to implementation and on-line use by trained EDs. The system also envisions that, when appropriate, trained EDs will have the option of "overriding" a system-recommended choice for enhanced patient safety and that they will choose the "most appropriate" telephone treatment options from available menus. New information may change the complexion of the emergency during the call as EDs validate caller responses or treatment. This system allows the trained ED to "reconfigure" response levels based on new information. With the foregoing in mind, this system cannot reasonably be expected to predict exact outcomes or unerring ED performance in all

Exhibit F

cases. The designers recommend that quality assurance mechanisms be put in place that include review of each of these "special choice" situations for ED correctness and consistency. This system cannot, under this license, ever be used by non-IAED-certified individuals. Failure to maintain an adequate number of certified personnel will void this license and all materials covered hereunder must be immediately returned.

- 6. Modification of Software, Cards, or PDS:** Other than as specifically provided in this ESP, YOU shall not modify, change, or alter the PDS Protocols or anything on the Software, Cards, or PDS without the prior, express, written consent of PDC. This ESP outlines the scientific process of protocol modification, which is performed by the College of Fellows of the IAED (see sections titled "Changing the PDS" and "Accepted Process for PDS Modification" in this ESP). Implementation of Updates, as provided in the section of this ESP titled "Updates & New Versions," qualifies as a modification, change, or alteration with PDC's express, written, prior consent. Any unauthorized change made, and/or implemented in the Software, Cards, or PDS by the Client is a material Breach of this EULA, giving cause for PDC to terminate this Agreement or withhold further Service and Support.
- 7. Derivative Products:** In the event any PDS client creates, knowingly or unknowingly, any derivative product of the PDS, such derivative product shall be owned by PDC and its use must be discontinued and the derivative (including all copies or drafts of such work) sent to PDC within 10 days of PDC's written request to do so.
- 8. Customization of Responses:** Authorized customization of the PDS consists of matching Priority Dispatch Determinant levels (A, B, C, D) with locally determined response capabilities of equipment and professional personnel. This is limited to additions to the blank "Response" section (bottom right) of all protocols. The responses to be inserted in said "Response" section are determined solely by the licensed client. Local ED authorities are authorized and within their license rights to so add responses to the specified bottom right section of the relevant cards, without any requirements to either notify PDC or to coordinate these particulars with PDC (unless required to do so by separate consulting agreement), and PDC bears no responsibility or liability for actual local responses selected or used. Additionally, the IAED allows the designated local law enforcement administrator, or their designee, to edit current Critical EPD Information (CEI) text to better address locally defined performance expectations. Adding CEI text shall preserve the intent of the original CEI and vary only by providing more specific instructions for actions EPD's should take. CEI text shall meet or exceed the standard of

Exhibit F

practice in law enforcement and neither PDC nor the IAED bears any responsibility or liability for CEI text used and relied upon.

- a. Documentation:** The approval and customizations above are generally finalized and documented through Dispatch Review Committee and Dispatch Steering meetings. It is YOUR responsibility to ensure sign off signatures and authorizations are obtained on record in writing, and that all ED personnel are training in their proper use.
- 9. Changing the PDS:** All written text and printed materials in the PDS, including, without limitation, Interrogation Questions, Dispatch Determinants, Pre-Arrival Instructions, Post-Dispatch Instructions and Additional Information are integral to the PDS. Licensed clients are NOT AUTHORIZED TO MAKE CHANGES TO THE PDS. Changes are made only by the Accepted Process specified in the section of this ESP titled "Accepted Process for PDS Modification." This is based on the following:
 - a. Implementation and Familiarity with the PDS.** The PDS has been in continuous field use since 1978, during which time it has been regularly enhanced through more than 13 major revisions for New Versions. It is not prudent for any client to consider recommending system changes prior to gaining the practical experience and perspective of implementing the PDS and running it "as is" at a demonstrated rate of high dispatcher compliance.
 - b. Total Quality Management.** A Quality Improvement and Management Program is required. Key elements shall include:
 1. As with other aspects of a sound emergency dispatch program, a qualified emergency service professional must be engaged as ED Director. Depending upon the requirements and resources of the professional emergency service system, this may be a part-time or a full-time position. In either case, the ED Director must be empowered with control over professional policies, procedures and decisions in the system. The ED Director must be regularly involved at all levels, particularly at the "front line" level where the EDs handle the calls for ED help. This helps even an experienced ED professional to become functionally "dispatch literate." The ED Director should also attend activities of the Quality Assurance committees and personnel, and evaluate and guide their performance. It is highly recommended that any ED Director who

Exhibit F

has not already participated in an IAED Executive Certification Course, do so before the end of the 6-month implementation period. This is required for eventual IAED Dispatch Center accreditation.

2. **PRIORITY DISPATCH SYSTEM STEERING and REVIEW**

COMMITTEE(S): One or more committees shall be established to set policy and review performance of ED operations with the PDS. The ED Director must participate in all material decisions by these committees and must be included as a signatory on any policy or procedural determinations made by such committees. A PDS Steering and Review Committee must be established and meet at least quarterly to review, evaluate, and approve the application of policies or procedures affecting PDS operations.

3. **CERTIFICATION:** It is required that all EDs utilizing the PDS be certified by the IAED and strongly recommended that all system administrators, managers, and supervisors be certified in the IAED 1-day National Executive Certification Course. The PDS shall not under any circumstances be used by untrained or uncertified individuals. The PDS is not intended to be quality assured or supervised by untrained or uncertified individuals.

4. **CONTINUING DISPATCH EDUCATION ("CDE"):** All EDs utilizing the PDS must participate in a structured CDE program that provides necessary relearning, familiarization, and updating with the evolving science of the PDS. At a minimum 12 hours per year must be devoted to CDE to ensure proper recertification by IAED.

5. **DISPATCHER PERFORMANCE EVALUATION AND**

PROTOCOL COMPLIANCE: It is required that EDs closely comply with the PDS interrogation, prioritization coding, and scripts. To this purpose, the Quality Improvement and Management Program must include continuous case review and evaluation according the IAED's Center of Excellence minimum performance requirements, which are available on its website. Eds not complying must be officially notified of the findings, retrained, and, if necessary, eventually disciplined. Non-compliance to the

Exhibit F

PDS has been demonstrated to significantly decrease its effectiveness and safety and shall not be tolerated by managers and employers. In the interest of public safety, the protocol must be followed.

6. **ACCREDITATION:** It is strongly recommended that all dispatch agencies utilizing the PDS achieve the operating performance standards required for Accreditation by the IAED.

10. Accepted Process for PDS Modification. In 1988, the IAED was formed as a scientific professional organization for Emergency Dispatching. Within the Academy's structure exists the College of Fellows - a select group of professional dispatch, public safety and emergency experts that has adopted the following mission statement: "To conduct an on-going review of the current standards of care and practice in Emergency Dispatch and evaluate the tools and the current standards of care and practice in Emergency Dispatch and evaluate and evaluate the tools and mechanisms used to meet or exceed those standards."

THROUGH A DEFINED PROCESS, THE FELLOWS REVIEW RECOMMENDED REVISIONS AND IMPROVEMENTS TO THE PDS IN A TIMELY, ORGANIZED WAY. THE ONLY AUTHORIZED METHOD OF PDS PROTOCOL CHANGE IS BY THIS ESTABLISHED SCIENTIFIC METHOD OF THE COLLEGE OF FELLOWS.

Individual licensed clients are not allowed to change or modify any pre-printed text or color-coded portion of Cards or Software unless authorized to do so by PDC, as agent of the IAED College of Fellows. All licensed clients are encouraged to share their significant recommendations, discoveries and data with the College in writing (see section titled "Research Data Sharing" in this BSP). By this scientific method, knowledge of the PDS can be unified and new improvements shared by all licensed clients.

11. Unsafe Practices. Unlike the authorized modifications specified above, no other modification or customization of the Software, Cards or PDS is authorized or allowed under this License. Any modification or mis-use of the Licensed Product(s) - i.e., a use not specifically authorized in this written Agreement - must be considered unsafe unless and until it has been formally approved through the Academy's scientific process referred to above. Unauthorized modifications to or changes of or misuse of the

Exhibit F

Licensed Product(s) would constitute material breaches of this Agreement and give cause for PDC to terminate it and to discontinue support hereunder. Because unauthorized modification, change and/or misuse of the Licensed Product(s) are expressly not allowed, YOU are solely responsible for any and all results of any such unauthorized modification, change or mis-use, and YOU hereby agree to indemnify and hold PDC and the IAED harmless from and against any damages and/or liabilities that may arise from any such breach of this Agreement by YOU. An example of an unsafe practice would include (but not be limited to) the following: The modification or responses to incorporate a "no-send" or "referral" option is not authorized by this License. Such practices may only be authorized under a special "Omega" Software License from the IAED. Any implementation of any such modifications without such an Omega License is an unsafe practice and must not be undertaken. Interested Licensees should contact the IAED to pursue any contemplated modification. In addition, the use of the software, protocols, and training materials by non-IAED-certified individuals is considered to be an Unsafe Practice and is not allowed under this license agreement.

a. CLIENT NOTIFICATION OF ANY UNSAFE PRACTICE(S) AND ITS

REMEDIES. The Licensor may at any time for any activity it deems as an Unsafe Practice, notify the Client to cease and desist such practices(s), and may, at the Licensor's sole discretion, grant a timeframe for such remedies to occur.

Reasonable consideration of sincere proposed processes or attempts by a Client so notified to effect remedies will not be unreasonably withheld. It is the sole right of the Licensor to invoke an immediate revocation of this license and the return of all licensed products if the Unsafe Practice is egregious enough to pose a risk to the public safety. Additionally, this EULA authorizes PDC or the IAED to contact applicable city, county, state, or national leaders or officials to inform them of any performance issues, threats to the safety of the public, or the like.

12. International Dispatch Coding System. The Determinant (and sub-determinant) codes represent the only widely accepted dispatch coding system in the world. A unified coding system provides for uniform training, use, data collection, data sharing, and comparative scientific study. This coding system may not be modified in any way not authorized in this EULA. As provided above, in the section of this ESP titled "Customization of Responses," however, it is the licensed client that selects the type of response, whatever it may be, to be generated by any particular code (e.g.,10-0-1). In this way, the coding

Exhibit F

system remains intact while allowing the client full discretion in establishing the local responses "attached" in parallel to these codes.

13. Standard of Care and Practice. Since 1978, PDC and its originators, have been the principal contributors to the establishment of safe professional standards for Emergency Medical Dispatch (and subsequently, Police and Fire Dispatch) care and training. PDC's Priority Dispatch Systems, as well as its ED training and certification programs, meet or exceed every applicable standard known to PDC. Through substantial commitments of expertise and other valuable resources to basic and applied research, development, quality improvement, dispatch liability, and risk management, PDC is dedicated and determined to continue setting the standard in ED. In the opinion of some medical-legal experts, when the current Version of the PDS is properly used by IAED-Certified ED professionals, the current standard for emergency dispatch has been met, and the most reasonable actions for both callers and responders have been taken by the ED center.

14. Dedicated Legal and Consultative Support. Priority Dispatch Corp. is available for ED system evaluations, ED case reviews, and expert opinion and witness services to currently registered licensed clients of the PDS who have are using the Newest Version, and to their professional staff of EDs and ED instructors who have been trained, then certified through the IAED and maintained their IAED certifications current. PDC's professional staff will vigorously defend proper use of the PDS by professionally trained EDs against charges of dispatch negligence that may arise. All such services are available at PDC's then-current fee schedule for such licensed client services.

15. National Q Services. National Q is a quality assurance service provided by PDC. In the event Customer utilizes National Q, the following shall apply:

- a. **Pre-National Q:** Customer understands that they and PDC shall have the following meetings before starting the QA services:
 - i. Stakeholders Meeting - overview of the system and process for directors, chiefs, and upper administration.
 - ii. QA/QI Meeting -Analysis of current system with current Customer QA staff.

Exhibit F

- iii. Protocol Refresher Meeting - overview of Protocol and QA for dispatch staff.

b. National Q Technical Process:

- i. Customer will allow PDC to have remote server access using Securelink® software to a dedicated physical or virtual workstation configured with AQUA®, ProQA® Admin Utility, Xlerator®, and the Customer's audio logger/recorder.
- ii. CAD (Computer Aided Dispatch), RMS (Record Management System), JMS (Jail Management System), and NCIC (National Crime Information Center) should not be accessible on this dedicated physical or virtual workstation.
- iii. PDC will audit calls remotely using Securelink®. An additional AQUA® software License per discipline will be provided by PDC for the National Q Reviewer's access for the term of contract, along with an accompanying voice logger integration license.
- iv. Customer understands that they must always update to the latest version of AQUA.
- v. If there is a Customer related issue (technical or otherwise) that prevents the National Q Reviewer from reviewing cases, including providing the associated reporting, PDC will only be responsible for two weeks of case review volume from the date the issue is resolved looking backward, and case review going forward.

c. **Quality Assurance Process:**

- i. QA shall be done according to the IAED standards for Accreditation ([http://www.emergencydispatch.org/standards for accreditation](http://www.emergencydispatch.org/standards%20for%20accreditation)).
- ii. Customer will receive weekly completed QA cases in AQUA based on the National Q timeline established by the parties. This will allow Customer to give appropriate and timely feedback.

Exhibit F

- iii. Customer must identify an individual to provide case review feedback to dispatchers as provided to them by the National Q reviewer. This individual must be certified by the IAED as an ED-Q. Customer's contact person (ED-Q) will work directly with the National Q representative. The Customer's ED-Q will provide any quality improvement feedback and training to Customer's dispatchers/calltakers based on the feedback they receive from the National Q Reviewer. In other words, the customer ED-Q will work with Customer's dispatchers/calltakers to help them understand structured protocol utilization, address protocol compliance and performance improvement requirements to become a more effective dispatcher/calltaker.
- iv. In order to ensure the integrity of the QA Service, any feedback provided by the Customer's ED-Q to its dispatchers/calltakers shall not be contrary or inconsistent with the National Q Reviewer's audit and comments. If the ED-Q does not understand or agree with the National Q review of the call or believes a mistake or miscommunication has occurred the ED-Q should inform the dispatcher/calltaker that they will research the issue and contact the National Q representative, so a resolution can be made through the appeals process. Once it has gone through the appeals process the decision is final

16. Definitions: This sections contains more detailed definitions of certain terms used in this EULA.

Cards: The manual version of a PDS in the form of printed reference cards or in the form of electronic tablets provided by PDC to Client under this EULA

Client, Customer, Agency, Licensee, You, Your: County of Fresno. The end user licensed to use the licensed Software under the Agreement. This is the end user who enters into the Agreement with PDC.

Certification and Recertification: When used in this agreement, certification and recertification mean specifically by the IAED

Exhibit F

ED, Emergency Dispatch and/or Emergency Dispatcher: These terms are basic to expanded definitions of Police, Fire and Medical Dispatch and/or Dispatcher, by adding the letters "P", "F" and/or "M", respectively; as in "EPD", "EFD" and/or "EMD", respectively.

PDS, Priority Dispatch System: These terms are basic to expanded definitions of Police, Fire and Medical Priority Dispatch Systems by adding the letters "P", "F" and/or "M", respectively; as in "PPDS", "FPDS" and/or "MPDS", respectively. For purposes of this EULA, a reference to PDS also includes a reference to MPDS, FPDS, and/or PPDS.

Update: An Update represents a collection of improvements, modifications, or enhancements to the Cards, Software or PDS within a Version (as this latter term is defined below). Generally, Updates are provided to all currently licensed and registered licensees under an Extended Service Plan with PDC. An Update is designated by the number to the right of the decimal point in the release number of a Software release (e.g., Release 12.2 would be an Update from Release 12.1). A Version may include a plurality of Updates (e.g., 11.1, 11.2 and 11.3 would be separate Updates within Version 11).

Version: A version of the Software constitutes the combination of the Software and/or Cards for a particular PDS. A Version is designated by the version number assigned by PDC to the left of the decimal point in the release number of a Software release (e.g., Version 11 of the Software is designated by 11.x; and the next new Version would be designated with 12.x). A New Version means, for example, going from 12.2 to 13.0 or in other words increasing the number to the left of the decimal point.

17. Additional PDC Products: Beyond the products and services discussed in this EULA, PDC also provides additional products/services to the Customer including, but not limited to, Field Responder Guides, Quality Assurance Guides, and Send Cards. As applicable, terms of this EULA also apply to the additional products and services provided by PDC to the Customer.

18. Cloud Services.

a. Cloud Services. PDC may make the Software or certain other products, or services purchased by Customer from PDC (collectively, "Cloud Services") and made

Exhibit F

available to Customer online or through another hosted environment pursuant to a purchase order or other agreement between PDC and Customer.

b. Access and Use.

(i) Provision of Access. Subject to the terms and conditions of this EULA, PDC hereby grants Customer a revocable, non-exclusive, non-transferable, non-sublicensable, limited right to access and use the Cloud Services during the term (the "Term") set out in the applicable agreement between Customer and PDC (the "Customer Agreement") solely for Customer's internal business operations by Authorized Users in accordance with the terms and conditions herein. PDC shall provide you the necessary passwords and access credentials to allow you to access the Cloud Services.

"Authorized User" means Customer and Customer's employees, consultants, contractors, or agents who are authorized by Customer to access and use the Cloud Services under the rights granted to Customer pursuant to this EULA and any underlying agreement between Customer and PDC.

(ii) Documentation License. Subject to the terms and conditions contained in this Agreement, PDC hereby grants Customer a non-exclusive, non-sublicensable, non-transferable license for Authorized Users to use PDC's user manuals, handbooks, guides relating to the Cloud Services provided by PDC to Customer either electronically or in hard copy form, and end-user documentation relating to the Cloud Services during the Term solely for Customer's internal business purposes in connection with use of the Cloud Services.

(iii) Use Restrictions. Customer shall not, and shall not permit any Authorized Users to, use the Cloud Services, any software component of the Cloud Services, or Documentation for any purposes beyond the scope of the access granted in this EULA or the applicable Customer Agreement. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Cloud Services, any software component of the Cloud Services, or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense,

Exhibit F

assign, distribute, publish, transfer, or otherwise make available the Cloud Services or Documentation except as expressly permitted under this Agreement; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Cloud Services, in whole or in part; (iv) remove any proprietary notices from the Cloud Services or Documentation; or (v) use the Cloud Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law, regulation, or rule.

(iv) **Aggregated Statistics.** Notwithstanding anything to the contrary in this Agreement, PDC may monitor Customer's use of the Cloud Services and collect, compile, use, and analyze data and information related to Customer's use of the Cloud Services to be used by PDC in an aggregated and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Cloud Services ("Aggregated Statistics"). As between PDC and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by PDC. You acknowledge that PDC may compile Aggregated Statistics based on Customer Data input into the Cloud Services. You agree that PDC may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that such Aggregated Statistics do not identify Customer or Customer's Confidential Information.

(v) **Reservation of Rights.** PDC reserves all rights not expressly granted to Customer in this EULA or the applicable Customer Agreement. Except for the limited rights and licenses expressly granted under this Agreement or the applicable Customer Agreement nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Cloud Services, the Documentation, and all intellectual property provided to Customer or any other Authorized User in connection with the

Exhibit F

foregoing (the "PDC IP"). For the avoidance of doubt, PDC IP includes Aggregated Statistics and any information, data, or other content derived from PDC's monitoring of Customer's access to or use of the Cloud Services but does not include Customer Data. "Customer Data" means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or any other Authorized User through the Cloud Services.

(vi) Suspension. Notwithstanding anything to the contrary in this Agreement, PDC may temporarily suspend Customer's and any other Authorized User's access to any portion or all of the Cloud Services if: (i) PDC reasonably determines that (A) there is a threat or attack on any of the PDC IP; (B) Customer's or any other Authorized User's use of the PDC IP disrupts or poses a security risk to the PDC IP or to any other customer or vendor of PDC; (C) Customer or any other Authorized User is using the PDC IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) PDC's provision of the Cloud Services to Customer or any other Authorized User is prohibited by applicable law; (ii) any vendor of PDC has suspended or terminated PDC's access to or use of any third-party services or products required to enable Customer to access the Cloud Services; or (iii) in accordance with Section 5 (any such suspension described in subclause (i), (ii), or (iii), a "Service Suspension"). PDC shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Cloud Services following any Service Suspension. PDC shall use commercially reasonable efforts to resume providing access to the Cloud Services as soon as reasonably possible after the event giving rise to the Cloud Services Suspension is cured. PDC will have no liability for any damage, liabilities, losses (including any loss of or profits), or any other consequences that Customer or any other Authorized User may incur as a result of a Service Suspension.

Exhibit F

c. Customer Responsibilities.

(i) Account Use. Customer is responsible and liable for all uses of the Cloud Services and Documentation resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Cloud Services and shall cause Authorized Users to comply with such provisions.

(ii) Customer Data. Customer hereby grants to PDC a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for PDC to provide the Cloud Services to Customer, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Aggregated Statistics. Customer will ensure that Customer Data and any Authorized User's use of Customer Data will not violate any policy or terms referenced in or incorporated into this Agreement or any applicable law. Customer is solely responsible for the development, content, operation, maintenance, and use of Customer Data.

(iii) Passwords and Access Credentials. Customer is responsible for keeping your passwords and access credentials associated with the Cloud Services confidential. Customer will not sell or transfer them to any other person or entity. Customer will promptly notify us about any unauthorized access to your passwords or access credentials.

(iv) Third-Party Products. The Cloud Services may permit access to Third-Party Products. For purposes of this Agreement, such Third-Party Products are subject to their

Exhibit F

own terms and conditions presented to Customer for acceptance within the Cloud Services by website link or otherwise. If Customer does not agree to abide by the applicable terms for any such Third-Party Products, then Customer should not install, access, or use such Third-Party Products.

d. Intellectual Property Ownership; Feedback. As between the Parties, (a) PDC owns all right, title, and interest, including all intellectual property rights, in and to the Cloud Services and (b) Customer owns all right, title, and interest, including all intellectual property rights, in and to Customer Data. If Customer or any of its employees, contractors, or agents sends or transmits any communications or materials to PDC by mail, email, telephone, or otherwise, suggesting or recommending changes to the Cloud Services, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("Feedback"), PDC is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. All Feedback is and will be treated as non-confidential. Customer hereby assigns to PDC on its behalf, and shall cause Customer's employees, contractors, and agents to assign, all right, title, and interest in, and PDC is free to use, without any attribution or compensation to Customer or any third party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although PDC is not required to use any Feedback.

(i) Limited Warranty and Warranty Disclaimer. PDC warrants that it provides Cloud Services using a commercially reasonable level of care and skill. THE FOREGOING WARRANTY DOES NOT APPLY TO, AND PDC STRICTLY DISCLAIMS, ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY PRODUCTS.

(ii) Customer Warranty. Customer warrants that it owns all right, title, and interest, including all intellectual property rights, in and to Customer Data.

(iii) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SUBPART (i) ABOVE THE CLOUD SERVICES ARE PROVIDED "AS IS" AND PDC SPECIFICALLY

Exhibit F

DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. PDC SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. PDC MAKES NO WARRANTY OF ANY KIND THAT THE CLOUD SERVICES, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET YOUR OR ANY OTHER PERSON'S OR ENTITY'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OF YOUR OR ANY THIRD PARTY'S SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.