

SOFTWARE LICENSE AND SERVICE AGREEMENT

This Software License and Service Agreement (“Agreement”) is dated January 23, 2023, and is between Public Risk Innovation, Solutions, and Management (“Prism”), a California Joint Powers Authority, formerly known as CSAC Excess Insurance Authority and the County of Fresno, a political subdivision of the State of California (“County”).

Recitals

- A. PRISM represents to County that, on April 4, 2013, PRISM under its former name, entered into a Master Software License and Professional Services Agreement (“Master Services Agreement”) with Systema Software, LLC (“Systema”) by which PRISM was authorized to license the SIMS claims management system to its members. Systema was thereafter sold to Insurity and Insurity continues to honor the Master Services Agreement entered into between PRISM and Systema.
- B. On July 15, 2014, PRISM entered into an agreement with County, Wherein PRISM sublicensed SIMS Claims Software to County under the same terms and conditions of the Master Software License and Services Agreement.
- C. PRISM represents to County that it worked with Insurity to have Insurity issue Claims Xpress (formerly known as SIMS) software licenses to County and the County agrees to utilize the ClaimsXpress system under the same terms and conditions provided for in the Master Services Agreement between PRISM and Insurity as well as the terms and conditions set forth herein. Member’s specific version of the ClaimsXpress system shall hereafter be referred to as “County’s Instance of ClaimsXPress.”
- D. PRISM shall provide initial front-line support of the ClaimsXpress system to County’s users which includes, but is not limited to, initial basic user technical support, and template development, and that PRISM shall cause Insurity to provide support to County for the County’s Instance of ClaimsXpress as outlined

1 in Addendum 8, including but not limited to Amendment Nos. 1 and 2 to
2 Addendum No. 8, to the Master Services Agreement.

3 E. County has no contractual rights with or obligations to Systema or Insurity.

4 The Parties therefore agree as follows:

5 **Article 1**

6 **PRISM'S Services**

7 1.1 **Scope of Services.** PRISM shall perform all of the services and request that Insurity
8 issue all of the software licenses, provided in Exhibit A to his Agreement, title "Scope of
9 Services."

10 1.2 **Representation.** PRISM represents to County that PRISM is qualified, ready, willing,
11 and able to perform all of the services, and request that Insurity issue all of the software
12 licenses, provided in this Agreement.

13 **Article 2**

14 **Compliance with Laws.**

15 2.1 PRISM shall, at its own cost, comply with all applicable federal, state, and local laws
16 and regulations in the performance of its obligations under this Agreement, including but not
17 limited to workers compensation, labor, and confidentiality laws and regulations.

18 **Article 3**

19 **County's Responsibilities**

20 3.1 County will cooperate with PRISM as reasonably necessary for PRISM to perform its
21 services and issue software licenses under this Agreement.

22 3.2 County will utilize the ClaimsXpress system under the same terms and conditions
23 provided for in the Master Services Agreement, as well as the terms and conditions set forth
24 herein.

25 3.3 Notwithstanding any provisions to the contrary in this Agreement, any reference in
26 this Agreement to the Master Services Agreement shall not obligate County under the Master
27 Services agreement.

1 **Article 4**

2 **Compensation, Invoices, and Payments**

3 4.1 County agrees to pay, and PRISM agrees to receive, compensation for the
4 performance of its services under this Agreement. As described in Exhibit B to this Agreement,
5 titled "Compensation."

6 4.2 **Maximum Compensation.** The maximum compensation payable to the Contractor
7 under this Agreement is as follows:

8 (A) 2022/23=\$19,922.66, 2023/24=\$14,236.47, 2024/25=\$14,490.66,
9 2025/26=\$14,760.10 and 2026/27=\$15,045.70.

10 (B) The first three years of the contract the County will be paying a maximum of
11 \$48,649.79. The total maximum for the two extensions would be \$29,805.80. The five-
12 year maximum for the contract is \$78,455.59.

13 4.3 **PRISM acknowledges.** The County is a local government entity and does so with
14 notice that the County's powers are limited by the California Constitution and by State law, and
15 with notice that PRISM may receive compensation under this Agreement only for services
16 performed according to the terms of this Agreement and while this Agreement is in effect.
17 PRISM further acknowledges that County employees have no authority to pay PRISM except as
18 expressly provided in this Agreement.

19 4.4 **Invoices.** PRISM shall submit one invoice for services annually to Human
20 Resources, Risk Management, 2220 Tulare St. 16th Floor, Fresno, CA 93721. For any services
21 under this Agreement that Insurity performs pursuant to the Master Agreement: (a) PRISM shall
22 cause Insurity to bill PRISM for such services. PRISM shall timely pay Insurity for such services
23 under the Master Agreement, and PRISM shall submit an invoice for such services to County, at
24 the address specified in Article 6 of this Agreement, within 60 days after the month in which
25 PRISM paid the Insurity invoices; (b) PRISM's invoice shall correlate the charge to the specific
26 service under Exhibit B, and County shall be charged for such services as set forth in Exhibit B;
27 and (c) County is under no obligation to pay Insurity directly for such services. County requires
28

1 the invoicing to be itemized and detail the specific service(s) included. County also requires a
2 cost schedule related to the work performed by Insurity.

3 4.5 **Payment.** The County shall pay each invoice within 45 days (30 days with a 15-day
4 grace period) after receipt. The County shall remit any payment to PRISM's address specified in
5 the invoice.

6 4.6 **Incidental Expenses.** PRISM is solely responsible for all of its costs and expenses
7 that are not specified as payable by the County under this Agreement, including, but not limited
8 to any amounts payable by PRISM to Insurity under the Master Services Agreement.

9 **Article 5**

10 **Term of Agreement**

11 5.1 **Term.** This Agreement is effective on July 1, 2022, and terminates on June 30, 2025,
12 except as provided in section 5.2, "Extension," or Article 8.1, "Termination and Suspension,"
13 below.

14 5.2 **Extension.** The term of this Agreement may be extended for no more than two, one-
15 year periods only upon written approval of both parties at least 30 days before the first day of
16 the next one-year extension period. The Human Resources Risk Manager or his or her
17 designee is authorized to sign the written approval on behalf of the County based on PRISM's
18 satisfactory performance. The extension of the Agreement by either party is not a waiver or
19 compromise of any default or breach of this Agreement by the other party existing at the time of
20 the extension whether or not known to the non-defaulting/non-breaching party.

21 **Article 6**

22 **Notices**

23 6.1 **Contact Information.** The persons and their addresses having authority to give and
24 receive notices provided for or permitted under this Agreement include the following:

25 **For the County:**
26 Risk Manager
27 County of Fresno
28 2220 Tulare St. 16th Floor
Fresno, CA 93721
Fax Number 559-455-4792

1 **For PRISM:**
2 CIO
3 PRISM
4 Tom Pelster
5 75 Iron Point Cir #200
6 Folsom, Ca 95630
7 Fax Number 916-850-7800

8 **6.2 Change of Contact Information.** Either party may change the information in section
9 6.1 by giving notice as provided in section 6.3.

10 **6.3 Method of Delivery.** Each notice between the County and PRISM provided for or
11 permitted under this Agreement must be in writing, state that it is a notice provided under this
12 Agreement, and be delivered either by personal service, by first-class United States mail, by an
13 overnight commercial courier service, by telephonic facsimile transmission, or by Portable
14 Document Format (PDF) document attached to an email.

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

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

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

23 (D) A notice delivered by telephonic facsimile transmission or by PDF document
24 attached to an email is effective when transmission to the recipient is completed (but, if such
25 transmission is completed outside of County business hours, then such delivery is deemed
26 to be effective at the next beginning of a County business day), provided that the sender
27 maintains a machine record of the completed transmission.

28 **6.4 Claims Presentation.** For all claims arising from or related to this Agreement,
nothing in this Agreement establishes, waives, or modifies any claims presentation
requirements or procedures provided by law, including the Government Claims Act (Division 3.6
of Title 1 of the Government Code, beginning with section 810).

1 **Article 7**

2 **Termination and Suspension**

3 **7.1 Termination for Non-Allocation of Funds.** The terms of this Agreement are
4 contingent on the approval of funds by the Board of Supervisors of the County. If sufficient funds
5 are not allocated, then the County, upon at least 30 days' advance written notice to PRISM,
6 may:

7 (A) Attempt to negotiate a modification of the term of this Agreement with PRISM; or

8 (B) Terminate this Agreement.

9 **7.2 Termination for Breach.**

10 (A) Upon determining that a breach (as defined in paragraph (C) below) has occurred,
11 either party may give written notice of the breach to the non-breaching party. The written
12 notice may suspend performance under this Agreement and must provide at least 30 days
13 for the other party to cure the breach.

14 (B) If the breaching party fails to cure the breach to the non-breaching party's
15 satisfaction within the time stated in the written notice, the non-breaching party may
16 terminate this Agreement immediately.

17 (C) For purposes of this section, a breach occurs when, in the determination of the
18 non-breaching party, the breaching party has:

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

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

21 (3) Improperly performed any of its obligations under this Agreement.

22 **7.3 Termination without Cause.** In circumstances other than those set forth above, either
23 party may terminate this Agreement by giving at least 30 days advance written notice to the
24 other party.

25 **7.4 No Penalty or Further Obligation.** Any termination of this Agreement by either party
26 under this Article 8 is without penalty to or further obligation of the other party.

27 **7.5 Termination for Breach.** Upon termination for breach under this Article 7, the County
28 may request repayment by PRISM of any monies disbursed to PRISM under this Agreement

1 that the County believes were in excess of the amount invoiced by PRISM. This section
2 survives the termination of this Agreement.

3 **Article 8**

4 **Independent Contractor**

5 8.1 **Status.** In performing under this Agreement, PRISM, including its officers, agents,
6 employees, and volunteers, is at all times acting and performing as an independent contractor,
7 in an independent capacity, and not as an officer, agent, servant, employee, joint venturer,
8 partner, or associate of the County.

9 8.2 **Verifying Performance.** The County has no right to control, supervise, or direct the
10 manner or method of the PRISM's performance under this Agreement, but the County may
11 verify that PRISM is performing according to the terms of this Agreement.

12 8.3 **Benefits.** Because of its status as an independent contractor, PRISM has no right to
13 employment rights or benefits available to County employees. PRISM is solely responsible for
14 providing to its own employees all employee benefits required by law. PRISM shall save the
15 County harmless from all matters relating to the payment of PRISM's employees, including
16 compliance with Social Security withholding and all related regulations.

17 8.4 **Services to Others.** The parties acknowledge that, during the term of this Agreement,
18 PRISM may provide services to others unrelated to the County.

19 **Article 9**

20 **Indemnity and Defense**

21 9.1 **Indemnity.** PRISM shall indemnify, hold harmless and defend the County (including its
22 officers, agents, employees, and volunteers) against all claims, demands, injuries, damages,
23 costs, expenses (including attorney fees and costs), fines, penalties, and liabilities of any kind to
24 the County, that arise from or relate to the performance or failure to perform by PRISM (or any
25 of its officers, agents, subcontractors, included but not limited to Insurity, or employees) under
26 this Agreement. The County may conduct or participate in its own defense without affecting
27 PRISM's obligation to indemnify and hold harmless or defend the County.

1 The County shall indemnify and hold harmless and defend PRISM (including its officers,
2 agents, employees, and volunteers) against all claims, demand, injuries, damages, costs,
3 expenses (including attorney fees and costs), fines penalties, and liabilities of any kind to
4 PRISM, that arise from or relate to the performance or failure to perform by the County (or any
5 of its officer, agents, subcontractors, or employees) under this Agreement. PRISM may conduct
6 or participate in its own defense without affecting the County's obligation to indemnify and hold
7 harmless or defend PRISM.

8 9.2 **Survival.** This Article 9 survives the termination of this Agreement.

9 **Article 10**

10 **Insurance**

11 10.1 PRISM shall comply with all the insurance requirements in Exhibit C to this
12 Agreement.

13 **Article 11**

14 **Inspections, Audits, and Public Records**

15 11.1 **Inspection of Documents.** PRISM shall make available to the County, and the
16 County may examine at any time during business hours and as often as the County deems
17 necessary, all of PRISM's records and data with respect to the matters covered by this
18 Agreement, excluding attorney-client privileged communications. PRISM shall, upon request by
19 the County, permit the County to audit and inspect all of such records and data to ensure
20 PRISM's compliance with the terms of this Agreement.

21 11.2 **State Audit Requirements.** If the compensation to be paid by the County under this
22 Agreement exceeds \$10,000, PRISM is subject to the examination and audit of the California
23 State Auditor, as provided in Government Code section 8546.7, for a period of three years after
24 final payment under this Agreement. This section survives the termination of this Agreement.

25 11.3 **Public Records.** Both parties to this Agreement are not limited in any manner with
26 respect to their public disclosure of this Agreement or any record or data that PRISM may
27 provide. Either party's public disclosure of this Agreement or any record or data that PRISM
28 may provide and may include but is not limited to the following:

1 (A) Either party may voluntarily, or upon request by any member of the public or
2 governmental agency, disclose this Agreement to the public or such governmental
3 agency.

4 (B) Either party may voluntarily, or upon request by any member of the public or
5 governmental agency, disclose to the public or such governmental agency any record or
6 data that the other party may provide, unless such disclosure is prohibited by court
7 order.

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

11 (D) This Agreement, and any record or data that one party may provide to the other
12 party, is subject to public disclosure as a public record under the California Public
13 Records Act (California Government Code, Title 1, Division 7, Chapter 3.5, beginning
14 with section 6250) ("CPRA").

15 (E) This Agreement, and any record or data that one party may provide the other
16 party, is subject to public disclosure as information concerning the conduct of the
17 people's business of the State of California under California Constitution, Article 1,
18 section 3, subdivision (b).

19 (F) Any marking of confidentiality or restricted access upon or otherwise made with
20 respect to any record or data that either party may provide to the other party shall be
21 disregarded and have no effect on either party's right or duty to disclose to the public or
22 governmental agency any such record or data.

23 **11.4 Public Records Act Requests.** If either party receives a written or oral request
24 under the CPRA to publicly disclose any record that is in the other party's possession or control,
25 and which the party receiving the request has a right, under any provision of this Agreement or
26 applicable law, to possess or control, then the receiving party may demand, in writing, that the
27 other party deliver to the receiving party, for purposes of public disclosure, the requested
28 records that may be in the possession or control of the other party. Within ten business days

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

18 **Article 12**

19 **General Terms**

20 12.1 **Modification.** Except as provided in Article 7, "Termination and Suspension," this
21 Agreement may not be modified, and no waiver is effective, except by written agreement signed
22 by both parties. PRISM acknowledges that County employees have no authority to modify this
23 Agreement except as expressly provided in this Agreement.

24 12.2 **Non-Assignment.** Neither party may assign its rights or delegate its obligations
25 under this Agreement without the prior written consent of the other party.

26 12.3 **Governing Law.** The laws of the State of California govern all matters arising from
27 or related to this Agreement.

1 12.4 **Jurisdiction and Venue.** This Agreement is signed and performed in Fresno
2 County, California. PRISM consents to California jurisdiction for actions arising from or related
3 to this Agreement, and, subject to the Government Claims Act, all such actions must be brought
4 and maintained in Fresno County.

5 12.5 **Construction.** The final form of this Agreement is the result of the parties' combined
6 efforts. If anything in this Agreement is found by a court of competent jurisdiction to be
7 ambiguous, that ambiguity shall not be resolved by construing the terms of this Agreement
8 against either party.

9 12.6 **Days.** Unless otherwise specified, "days" means calendar days.

10 12.7 **Headings.** The headings and section titles in this Agreement are for convenience
11 only and are not part of this Agreement.

12 12.8 **Severability.** If anything in this Agreement is found by a court of competent
13 jurisdiction to be unlawful or otherwise unenforceable, the balance of this Agreement remains in
14 effect, and the parties shall make best efforts to replace the unlawful or unenforceable part of
15 this Agreement with lawful and enforceable terms intended to accomplish the parties' original
16 intent.

17 12.9 **Nondiscrimination.** During the performance of this Agreement, neither party shall
18 unlawfully discriminate against any employee or applicant for employment, or recipient of
19 services, because of race, religious creed, color, national origin, ancestry, physical disability,
20 mental disability, medical condition, genetic information, marital status, sex, gender, gender
21 identity, gender expression, age, sexual orientation, military status or veteran status pursuant to
22 all applicable State of California and federal statutes and regulation.

23 12.10 **No Waiver.** Payment, waiver, or discharge by the County of any liability or obligation
24 of PRISM under this Agreement on any one or more occasions is not a waiver of performance
25 of any continuing or other obligation of PRISM and does not prohibit enforcement by the County
26 of any obligation on any other occasion.

27 12.11 **Entire Agreement.** This Agreement, including its exhibits, is the entire agreement
28 between PRISM and the County with respect to the subject matter of this Agreement, and it

1 supersedes all previous negotiations, proposals, commitments, writings, advertisements,
2 publications, and understandings of any nature unless those things are expressly included in
3 this Agreement. If there is any inconsistency between the terms of this Agreement without its
4 exhibits and the terms of the exhibits, then the inconsistency will be resolved by giving
5 precedence first to the terms of this Agreement without its exhibits, and then to the terms of the
6 exhibits.

7 12.12 **No Third-Party Beneficiaries.** This Agreement does not and is not intended to
8 create any rights or obligations for any person or entity except for the parties.

9 12.13 **Authorized Signature.** PRISM represents and warrants to the County that:

10 (A) PRISM is duly authorized and empowered to sign and perform its obligations
11 under this Agreement.

12 (B) The individual signing this Agreement on behalf of PRISM is duly authorized to
13 do so and his or her signature on this Agreement legally binds PRISM to the terms of
14 this Agreement.

15 12.14 **Electronic Signatures.** The parties agree that this Agreement may be executed by
16 electronic signature as provided in this section.

17 (A) An "electronic signature" means any symbol or process intended by an individual
18 signing this Agreement to represent their signature, including but not limited to (1) a
19 digital signature; (2) a faxed version of an original handwritten signature; or (3) an
20 electronically scanned and transmitted (for example by PDF document) version of an
21 original handwritten signature.

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

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

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

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

11 12.14 **Counterparts.** This Agreement may be signed in counterparts, each of which is an
12 original, and all of which together constitute this Agreement.

13 [SIGNATURE PAGE FOLLOWS]
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1 The parties are signing this Agreement on the date stated in the introductory clause.

2 PRISM

COUNTY OF FRESNO

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

Sal Quintero
7 Sal Quintero, Chairman of the Board of
8 Supervisors of the County of Fresno

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

12 By: Harame
13 Deputy

14 For accounting use only:

15 Org No.: 89250100
16 Account No.: 7288
17 Fund No.: 1060
18 Subclass No.: 10000
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Exhibit A

Scope of Services

1
2 PRISM agrees to work with Insurity to have Insurity issue ClaimsXPress software
3 licenses to County through Insurity, and County agrees to utilize the ClaimsXPress system,
4 under the same terms and conditions provided for in the Master Services Agreement, as well as
5 the terms and conditions set forth herein for the term of this Agreement. County's specific
6 version of the ClaimsXPress system shall hereafter be referred to as the "County's instance of
7 ClaimsXPress.

8 PRISM shall provide initial front-line support of the ClaimsXPress system to County's
9 users, which includes, but is not limited to, initial basic user technical support, report
10 development, and template development.

11 PRISM shall cause Insurity to: (a) provide support to the County for the County's
12 instance of ClaimsXPress as outlined in Addendum 8, including but not limited to Amendment
13 Nos. 1 and 2 to Addendum No. 8. to the Master Software Licenses and Services Agreement; (b)
14 provide cloud hosting to County; and (c) be responsible for maintaining the server that the
15 County's instance of ClaimsXPress is hosted on, as well provide up-time support for said
16 server(s).

17 In the event that PRISM migrates data to a new claims system, County will be provided
18 at least sixty (60) days' notice before that migration occurs. In addition, County shall be given
19 the option to contract directly with Insurity for County's instance of ClaimsXPress or contract
20 with PRISM to migrate to and manage data in PRISM's new claims system.

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Exhibit B

Compensation

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

Payment for Services: County agrees to pay PRISM on a “pass through” basis for costs incurred related to the County’s instance of ClaimsXPress. These costs include the annual maintenance and support costs associated with the five (5) concurrent software licenses as well as two (2) additional interfaces/modules currently developed for County’s account (Check issuance and positive pay). “pass-through basis” means that PRISM is invoiced annually by Insurity for the maintenance and support costs incurred by Insurity related to County’s costs of ClaimsXpress and that PRISM then invoices that same amount to County without markup. All applicable maintenance and support costs are set forth in the below table. PRISM includes a flat \$1,000 annually for the front-line support provided by PRISM.

One-time costs to bring user license count to a maximum of five (5) licenses

Description	2022/23	2023/24	2024/25	2025/26	2026/27
Additional user licenses	6,000.00				

On-going costs by year

Maintenance and Support ^{†*}	\$3,922.66	\$4,236.47	\$4,490.66	\$4,760.10	\$5,045.71
Hosting	\$9,000.00	\$9,000.00	\$9,000.00	\$9,000.00	\$9,000.00
Total Insurity Cost	\$18,922.66	\$13,158.02	\$13,407.50	\$13,671.95	\$13,952.27
PRISM Administration	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00

Exhibit B

Cumulative Cost Estimate					
	19,922.66	14,236.47	\$14,490.66	\$14,760.10	\$15,045.71

Total one-time and on-going costs

Description	2022/23	2023/24	2024/25	2025/26	2026/27
Total Costs	\$19,922.66	\$14,236.47	\$14,490.66	\$14,760.10	\$15,045.70

+ Cost includes two new user licenses

** Items 20% of the license cost, 3rd party software connectors, and custom development subject to a maximum increase by Consumer Price Index (CPI) annually. The CPI is estimated at 8% for budgeting purposes under this Agreement but is only an estimate. The actual CPI will be based on the CPI at the end of each March; Insurity annual invoicing period.*

ADDITIONAL DEVELOPMENT. Should County wish to add additional modules, interfaces, change layouts for an existing module, interface (“Additional Services”), or require any Insurity custom development, County shall initiate a request with PRISM. PRISM will then provide the County with the quote via a contract amendment. The County’s Human Resources Director, shall be authorized to enter into such amendment between the parties, subject to approval as to legal form by County Counsel and as to accounting form by Auditor-Controller/Treasurer-Tax Collector, PRISM will authorize Insurity to proceed with development only after the County executes the contract amendment. All such work will be billable through PRISM to the County on a time and expense basis at the rate of \$165/hour. PRISM will provide relevant detailed billing to the County.

Exhibit C

Insurance Requirements

1. Required Policies

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

- (A) **Commercial General Liability.** Commercial general liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000). This policy must be issued on a per occurrence basis. Coverage must include products, completed operations, property damage, bodily injury, personal injury, and advertising injury. PRISM shall obtain an endorsement to this policy naming the County of Fresno, its officers, agents, employees, and volunteers, individually and collectively, as additional insureds, but only insofar as the operations under this Agreement are concerned. Such coverage for additional insureds will apply as primary insurance and any other insurance, or self-insurance, maintained by the County is excess only and not contributing with insurance provided under PRISM's policy.
- (B) **Workers Compensation.** Workers compensation insurance as required by the laws of the State of California with statutory limits.
- (C) **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.
- (D) **Technology Professional Liability (Errors and Omissions).** Technology professional liability (errors and omissions) insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and in the aggregate. Coverage must encompass all of PRISM's obligations under this Agreement, including but not limited to claims involving Cyber Risks.
- (E) **Cyber Liability.** Cyber liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence. Coverage must include claims involving Cyber Risks. The cyber liability policy must be endorsed to cover the full replacement value of damage to, alteration of, loss of, or destruction of intangible property (including but not limited to information or data) that is in the care, custody, or control of PRISM.

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

2. Additional Requirements

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

Exhibit C

- (i) Each insurance certificate must state that: (1) the insurance coverage has been obtained and is in full force; (2) the County, its officers, agents, employees, and volunteers are not responsible for any premiums on the policy; and (3) PRISM has waived its right to recover from the County, its officers, agents, employees, and volunteers any amounts paid under any insurance policy required by this Agreement and that waiver does not invalidate the insurance policy.
 - (ii) The commercial general liability insurance certificate must also state, and include an endorsement, that the County of Fresno, its officers, agents, employees, and volunteers, individually and collectively, are additional insureds insofar as the operations under this Agreement are concerned. The commercial general liability insurance certificate must also state that the coverage shall apply as primary insurance and any other insurance, or self-insurance, maintained by the County shall be excess only and not contributing with insurance provided PRISM's policy.
 - (iii) The technology professional liability insurance certificate must also state that coverage encompasses all of PRISM's obligations under this Agreement, including but not limited to claims involving Cyber Risks, as that term is defined in this Agreement.
 - (iv) The cyber liability insurance certificate must also state that it is endorsed, and include an endorsement, to cover the full replacement value of damage to, alteration of, loss of, or destruction of intangible property (including but not limited to information or data) that is in the care, custody, or control of PRISM.
- (B) **Acceptability of Insurers.** All insurance policies required under this Agreement must be issued by admitted insurers licensed to do business in the State of California and possessing at all times during the term of this Agreement an A.M. Best, Inc. rating of no less than A: VII.
- (C) **Notice of Cancellation or Change.** For each insurance policy required under this Agreement, PRISM shall provide to the County, or ensure that the policy requires the insurer to provide to the County, written notice of any cancellation or change in the policy as required in this paragraph. For cancellation of the policy for nonpayment of premium, PRISM shall, or shall cause the insurer to, provide written notice to the County not less than 10 days in advance of cancellation. For cancellation of the policy for any other reason, and for any other change to the policy, PRISM shall, or shall cause the insurer to, provide written notice to the County not less than 30 days in advance of cancellation or change. The County in its sole discretion may determine that the failure of PRISM or its insurer to timely provide a written notice required by this paragraph is a breach of this Agreement.
- (D) **County's Entitlement to Greater Coverage.** If PRISM has or obtains insurance with broader coverage, higher limits, or both, than what is required under this Agreement, then the County requires and is entitled to the broader coverage, higher limits, or both. To that end, PRISM shall deliver, or cause its broker or producer to deliver, to the County's Risk 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.

Exhibit C

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