

AGREEMENT

THIS AGREEMENT is made and entered into this 12th day of March, 2019, by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California, hereinafter referred to as "COUNTY", and Priority Dispatch Corporation, a Corporation whose address is 110 S. Regent Street, Suite 500, Salt Lake City, Utah, 84111, hereinafter referred to as "CONTRACTOR".

WITNESSETH:

WHEREAS, COUNTY purchased CONTRACTOR'S software system, the Medical Priority Dispatch System (hereafter "MPDS"), consisting of medical priority dispatch software (ProQA), reporting system software (Aqua) and Card Set; and

WHEREAS, CONTRACTOR provides continuous maintenance and support for MPDS; and

WHEREAS, COUNTY and CONTRACTOR desire to execute this Agreement for the continued maintenance and support of MPDS as further defined herein.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto agree as follows:

1. DEFINITIONS

A. Acceptance Criteria

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

B. Acceptance Test

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

C. Aqua

Reporting tool for ProQA which allows tracking of compliance.

D. Card Set

Manual flip cards that contain questions and resulting determinates for the problem nature.

1 E. Change Control Process

2 Process used by COUNTY to inform staff of new or updated production
3 use systems.

4 F. COUNTY System Hardware

5 The central processing units owned or leased by COUNTY for which
6 COUNTY is licensed to use the System Software, any back-up equipment
7 for such central processing units. And any peripheral hardware such as
8 terminals, printers, and personal computers as described in this
9 Agreement.

10 G. COUNTY System Software

11 The operating system and database software installed on the COUNTY
12 System Hardware.

13 H. License

14 The meaning assigned to the term "License" as defined in Section II-A of
15 this Agreement and the rights and obligations in creates under the laws of
16 the United States of America and the State of California including without
17 limitation, copyright, and intellectual property law.

18 I. Monies

19 The terms "Monies", "Charges", "Price", and "Fees" will be considered to be
20 equivalent.

21 J. ProQA

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

25 K. Public Records

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

1 L. Supplier

2 The terms "Supplier", "Vendor", and "Priority Dispatch Corporation" all refer
3 to CONTRACTOR and are considered to be equivalent throughout this
4 Agreement.

5 M. System

6 The System Software and System Documentation, collectively. Reference
7 to the "System" shall include any component thereof. All modifications and
8 enhancements to the System shall be deemed to be part of the System as
9 defined herein and shall be subject to all terms and conditions set forth
10 herein. The System consists of MPDS which supports the Fresno County
11 Department of Public Health, all interfaces, and third party software
12 required for the System to function.

13 N. System Documentation

14 The documentation relating to the System Software, and all manuals,
15 reports, brochures, sample runs, specifications, and other materials
16 comprising such documentation provided by CONTRACTOR in connection
17 with the System Software pursuant to this Agreement.

18 O. System Operation

19 The general operation of COUNTY'S hardware and all software including,
20 but not limited to, system restarts, configuration and operation of system
21 peripherals (such as printers, modems, and terminals), installation of new
22 software releases and other related activities.

23 P. System Installation

24 All software has been delivered, has been physically loaded on a
25 computer, and COUNTY has successfully executed program sessions.

26 Q. System Software

27 That certain computer software described in this AGREEMENT provided
28 by CONTRACTOR, and all interfaces, coding, tapes, disks, modules, and

similar materials comprising such software on or which it is stored. System Software shall not include operating system software.

R. User

The terms "User", "Customer", and "Licensee" all refer to COUNTY and are considered to be equivalent throughout this Agreement.

S. (etc.)

2. **OBLIGATIONS OF THE CONTRACTOR**

A. Software License – See End User License Agreement (EULA) attached hereto as Exhibit A and incorporated herein by reference.

B. SERVICES TO BE PROVIDED BY CONTRACTOR TO COUNTY
CONTRACTOR shall provide to COUNTY MPDS System Documentation. Additional documentation may be provided. CONTRACTOR shall provide new System Documentation corresponding to all new Software Upgrades. COUNTY may print additional copies of all documentation. All System Documentation is to be used by COUNTY only for the purposes identified within this Agreement.

C. SYSTEM MAINTENANCE AND SUPPORT BY CONTRACTOR
System maintenance and support includes System Updates as they are released by CONTRACTOR, including Updates as required as a result of regulatory changes. The first day of production use will be identified by COUNTY and communicated to CONTRACTOR. CONTRACTOR will support day-to-day operation of the System including the following services:

1) **SUPPORT HOURS/SCOPE**

Provide unlimited technical assistance by phone during normal coverage hours (7:00 a.m. to 6:00 p.m. Pacific Standard Time (PST), Monday through Friday, except CONTRACTOR and COUNTY holidays), toll-free telephone assistance to keep the System in, or restored to, normal operating condition. The object of this support will be to answer specific questions related to the System Software and the application thereof. Support provided under this Agreement does not include training of new personnel (after

1 initial staff is trained), operation of hardware, or solving other hardware/software
2 problems unrelated to the System Software.

3 2) SUPPORT RESPONSE

4 During the term of this Agreement, CONTRACTOR will (a) correct any error or
5 malfunctions in the System as supplied by CONTRACTOR which prevents it from
6 operating in conformance with the specifications set forth in this Agreement or (b)
7 provide a commercially reasonable alternative that will conform to the specifications set
8 forth in this Agreement. If analysis by CONTRACTOR indicates a reported problem is
9 caused by a reproducible error or malfunction in the then-current release of the System
10 Software as supplied and maintained by CONTRACTOR that significantly impacts
11 effective use of the System by COUNTY, CONTRACTOR will, if the System is
12 inoperable, as reported by COUNTY, provide continuous effort to correct the error or to
13 resolve the problem by providing a circumvention.

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

20 3) REMOTE VIRTUAL PRIVATE NETWORK (VPN) DIAGNOSTICS

21 Remote VPN Diagnostics Support includes:

- 22 • Diagnostic or corrective actions necessary to restore proper MPDS operation.
- 23 • Diagnostic actions which attempt to identify the cause of system problems.
- 24 • Correction of data file problems.
- 25 • Go To Meetings, Go To Assist, or the like

26 CONTRACTOR product specialists will provide diagnostics via VPN on MPDS. COUNTY
27 will provide any required hardware and equipment necessary at COUNTY for
28 CONTRACTOR VPN support.

1 D. ADDITIONAL SYSTEM MAINTENANCE SERVICES BY CONTRACTOR

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

10 1) TRAINING

11 Additional Training at a County facility is available upon request by COUNTY at an additional
12 charge under the terms of this Agreement. Requests for additional training will be reviewed by
13 CONTRACTOR and must be requested in writing in advance by the COUNTY Contract
14 Administrator. Charges will be at rates identified in this Agreement.

15 2) DATA AND SYSTEM CORRECTIONS

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

23 3) CUSTOMER SITE VISITS

24 Site visits to COUNTY sites, as may be requested in writing by COUNTY and that are within the
25 scope of the project services, are available for reasons such as, but not limited to, (a) additional
26 System training on hardware or software usage; (b) resolution of System difficulties not
27 resulting from actions by, or otherwise the responsibility of CONTRACTOR (as determined by
28 mutual agreement between CONTRACTOR and COUNTY); (c) installation of Software

1 Releases; and (d) assistance in equipment maintenance, movement or diagnosis. Site visits
2 outside of the scope of project services will be reviewed by CONTRACTOR and must be
3 requested in writing in advance by the COUNTY Contract Administrator. Charges will be at
4 rates identified in this Agreement.

5 E) CONTRACTOR PROJECT COORDINATOR

6 Upon execution of this Agreement, CONTRACTOR shall appoint a Project Coordinator who will
7 act as the primary contact person to interface with COUNTY for implementation, maintenance
8 and support of MPDS.

9 F) SYSTEM UPDATES AND NEW PRODUCTS

10 1) SYSTEM UPDATES

11 From time to time CONTRACTOR will develop and provide System Updates to COUNTY for
12 the COUNTY'S licensed CONTRACTOR software. System Updates shall be subject to the
13 terms and conditions of this Agreement and shall be deemed licensed System Software
14 hereunder and will be made available to COUNTY as set forth in Exhibit A. System Updates will
15 be made available to COUNTY at the discretion of CONTRACTOR but will not be unreasonably
16 withheld.

17 2) NEW PRODUCTS

18 CONTRACTOR may from time to time release new software with capabilities substantially
19 different from or greater than the System Software ("New Products") and which therefore do not
20 constitute System Updates. These New Products will be made available to COUNTY at a cost
21 not to exceed CONTRACTOR's then standard rates for customers similarly situated.

22 G) OPERATING SYSTEM UPDATES

23 The application must run on an operating system (O/S) that is consistently and currently
24 supported by the operating system vendor. Applications under maintenance are expected to
25 always be within 1 year of current in regards to the O/S. Outdated or unsupported O/S will not
26 be implemented on the production network.

27 With approval from CONTRACTOR, COUNTY will apply patches to both the operating system,
28 and security subsystems as releases are available from operating system vendors. The

1 application is expected to perform in this environment. CONTRACTOR is expected to keep
2 their software within 1 year of current in order to operate in this environment. These patches
3 include critical O/S updates and security patches.

4 H) ANTI-VIRUS MANAGEMENT

5 COUNTY will actively run anti-virus management, where appropriate, on all application servers
6 and PCs. The application is expected to perform adequately while anti-virus management is
7 active. While installing or implementing the Software Systems it may become necessary for the
8 COUNTY to turn off or shut down its anti-virus program to adequately allow the Software
9 Systems to install.

10 I) ADHERE TO CHANGE CONTROL PROCESS

11 CONTRACTOR must adhere to COUNTY's Change Control Process, which shall be provided
12 to CONTRACTOR in writing. COUNTY employs a procedure to implement updates, upgrades,
13 and version releases to a system that is in production use. This forum allows COUNTY's
14 Information Technology Services Division (ITSD) to inform staff (Help Desk, Network, Server,
15 Database, Security, and Analysts) of upcoming changes to a production system.

16 CONTRACTOR must inform ITSD a minimum of one (1) week prior to any planned, non-
17 emergency changes so that the Change Control Process may be followed. In order to inform
18 ITSD, ITSD must sign up for notifications as set forth in Attachment A.

19 3. OBLIGATIONS OF THE COUNTY

20 A. COUNTY CONTRACT ADMINISTRATOR

21 COUNTY shall appoint the Chief Information Officer (CIO) or his designee as
22 COUNTY's Contract Administrator with full authority to deal with CONTRACTOR
23 in all matters concerning this Agreement.

24 B. SAFEGUARDING SYSTEM SOFTWARE

25 COUNTY will follow its present practices to safeguard System Software delivered
26 to COUNTY by CONTRACTOR. A copy of COUNTY'S "Information Technology
27 (IT) Standards and Preferences" will be made available upon request.

28 C. BACKUP AND RECOVERY MANAGEMENT

1 1) COUNTY utilizes a backup and recovery system written and maintained
2 by Commvault Systems. This application requires a backup agent to run on
3 the server.

4 2) COUNTY will provide CONTRACTOR with an account with
5 approximate administrative rights to administer the application. The
6 account password is expected to periodically expire.

7 3) In order for the application to run on COUNTY supported servers, the
8 application must not require the users to have administrative rights on the
9 servers.

10 4) COUNTY, at all times, during and after the performance of the
11 installation of the System Software, is responsible for maintaining adequate
12 backups to protect against loss of data.

13 D. SYSTEM HARDWARE AND SYSTEM SOFTWARE

14 COUNTY will at its own expense provide and properly maintain and update on an
15 on-going basis all necessary COUNTY System Software and COUNTY System
16 Hardware required to operate MPDS. Said COUNTY System Software and
17 COUNTY System Hardware shall meet or exceed CONTRACTOR's
18 recommendations.

19 As part of COUNTY's responsibility for computer infrastructure, COUNTY is
20 responsible for ensuring that data is secure and protected at all times.

21 CONTRACTOR is not responsible for and cannot be held liable for inadvertent
22 data disclosure or theft from COUNTY facilities.

23 E. COUNTY PROJECT MANAGER

24 Upon execution of this Agreement, COUNTY's Contract Administrator shall
25 designate one individual from ITSD who will function as Project Manager with
26 responsibility for day-to-day management of the project for implementation of
27 MPDS. The Project Manager and COUNTY personnel shall have the necessary
28

1 and appropriate training and experience to implement the terms of this
2 Agreement. COUNTY acknowledges CONTRACTOR'S reliance on same.

3 F. OTHER COUNTY OBLIGATIONS

4 1) COUNTY agrees to comply with the terms of Exhibit A, attached hereto
5 and by this reference incorporated herein.

6 2) Technical assistance from COUNTY's Information Technology staff will
7 be provided during the performance of the installation of the System
8 Software. In particular, COUNTY will provide:

9 a) Network connectivity and troubleshooting assistance.

10 b) Ability to monitor network traffic and isolate
11 bottlenecks.

12 c) Technical assistance concerning the integration with
13 existing COUNTY systems (if applicable).

14 d) Expertise to handle issues with PCs, printers, and cabling
15 before, during, and after rollout.

16 2) Unless otherwise specified, for third-party software, CONTRACTOR
17 shall provide standard documentation in electronic form (via the Internet or
18 File Transfer Protocol (FTP)).

19 3) The System being provided runs in a Local Area Network and Web
20 environment. As such, the performance of the System is directly related to,
21 among other things: available network bandwidth, and the performance of
22 other applications. For this reason, CONTRACTOR makes no guarantees
23 as to System response time.

24 4. **TERM**

25 The term of this Agreement shall be for a period of three (3) years, commencing on March
26 25, 2019 through and including March 24, 2022. This Agreement may be extended for two (2)
27 additional consecutive twelve (12) month periods upon written approval of both parties no later
28 than thirty (30) days prior to the first day of the next twelve (12) month extension period. The

1 Director of the Department of Internal Services or his or her designee is authorized to execute
2 such written approval on behalf of COUNTY based on CONTRACTOR'S satisfactory
3 performance.

4 5. **TERMINATION**

5 A. Non-Allocation of Funds - The terms of this Agreement, and the services to be
6 provided hereunder, are contingent on the approval of funds by the appropriating government
7 agency. Should sufficient funds not be allocated, the services provided may be modified, or this
8 Agreement terminated, at any time by giving the CONTRACTOR thirty (30) days advance written
9 notice.

10 B. Breach of Contract - The COUNTY may immediately suspend or terminate this
11 Agreement in whole or in part, where in the determination of the COUNTY there is:

- 12 1) An illegal or improper use of funds;
- 13 2) A failure to comply with any term of this Agreement;
- 14 3) A substantially incorrect or incomplete report submitted to the
15 COUNTY;
- 16 4) Improperly performed service.

17 In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of any
18 breach of this Agreement or any default which may then exist on the part of the CONTRACTOR.
19 Neither shall such payment impair or prejudice any remedy available to the COUNTY with respect
20 to the breach or default. The COUNTY shall have the right to demand of the CONTRACTOR the
21 repayment to the COUNTY of any funds disbursed to the CONTRACTOR under this Agreement,
22 which in the judgment of the COUNTY were not expended in accordance with the terms of this
23 Agreement. The CONTRACTOR shall promptly refund any such funds upon demand.

24 C. Without Cause - Under circumstances other than those set forth above, this
25 Agreement may be terminated by COUNTY upon the giving of thirty (30) days advance written
26 notice of an intention to terminate to CONTRACTOR.

27 6. **COMPENSATION/INVOICING:**

28 COUNTY agrees to pay CONTRACTOR and CONTRACTOR agrees to receive compensation as

1 follows:

2 **New Annual Maintenance & Support Fees (ESP)**

ESP	Qty	Price	Ext
ProQA Medical	26	\$ 562.50	\$ 14,625.00
ProQA Fire	26	\$ 562.50	\$ 14,625.00
ProQA Training	46	\$ 281.25	\$ 12,937.50
AQUA 4 med/4 fire	1	\$ 1,080.00	\$ 1,080.00
Med Cards	23	\$ 49.00	\$ 1,127.00
Fire Cards	23	\$ 49.00	\$ 1,127.00
ESP/year			\$ 45,521.50

11 **Pricing for Additional Products/Services NTE \$20k/year**

ProQA License	\$ 3,750.00
ProQA Training	\$ 1,875.00
AQUA	\$ 900.00
Cardset	\$ 495.00
ESP - ProQA/License	\$ 562.50
ESP - AQUA/License	\$ 135.00
Cardset ESP	\$ 49.00
Daily Rate: Training, Onsite, Etc.	\$ 1,500.00
ProQA Updates: Price per license	\$ 495.00

23 **A. FEE CHANGES**

24 CONTRACTOR may increase Annual Maintenance and Support fees, including Additional
25 License/Services Fees upon thirty (30) days' advance written notice to COUNTY provided that
26 CONTRACTOR shall not increase such fees more than once in any one year period, and
27 provided further that each increase will not exceed the previous fees by the lesser of (i) three
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1 percent (3%) per year or (ii) the cumulative percentage increase in the Consumer Price Index,
2 All Urban Consumers for the U.S., during the previous year.

3 **B. TOTAL CONTRACT AMOUNT**

4 In no event shall services performed under this Agreement be in excess of \$377,913
5 during the entire potential five year term of this Agreement. It is understood that all expenses
6 incidental to CONTRACTOR'S performance of services under this Agreement shall be borne by
7 CONTRACTOR.

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

17 CONTRACTOR and COUNTY shall comply with all applicable provisions of law and the
18 rules and regulations, if any, of governmental authorities having jurisdiction over matters the
19 subject thereof.

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

28 8. **MODIFICATION:** Any matters of this Agreement may be modified from time to time

1 by the written consent of all the parties without, in any way, affecting the remainder.

2 9. **NON-ASSIGNMENT:** Neither party shall assign, transfer or sub-contract this
3 Agreement nor their rights or duties under this Agreement without the prior written consent of the
4 other party.

5 10. **HOLD HARMLESS:** CONTRACTOR agrees to indemnify, save, hold harmless,
6 and at COUNTY'S request, defend the COUNTY, its officers, agents, and employees from any
7 and all costs and expenses (including attorney's fees and costs), damages, liabilities, claims, and
8 losses occurring or resulting to COUNTY in connection with the performance, or failure to perform,
9 by CONTRACTOR, its officers, agents, or employees under this Agreement, and from any and all
10 costs and expenses (including attorney's fees and costs), damages, liabilities, claims, and losses
11 occurring or resulting to any person, firm, or corporation who may be injured or damaged by the
12 performance, or failure to perform, of CONTRACTOR, its officers, agents, or employees under
13 this Agreement. For the sake of clarification, it is understood that Contractor does not guarantee,
14 nor indemnify, nor shall the Contractor hold any party harmless to any use of or reliance upon the
15 dispatch protocols or licensed products provided by Contractor under this agreement.

16 11. **INSURANCE**

17 Without limiting the COUNTY's right to obtain indemnification from CONTRACTOR or any
18 third parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect, the
19 following insurance policies or a program of self-insurance, including but not limited to, an
20 insurance pooling arrangement or Joint Powers Agreement (JPA) throughout the term of the
21 Agreement:

22 A. **Commercial General Liability**

23 Commercial General Liability Insurance with limits of not less than Two Million Dollars
24 (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00).
25 This policy shall be issued on a per occurrence basis. COUNTY may require specific coverages
26 including completed operations, products liability, contractual liability, Explosion-Collapse-
27 Underground, fire legal liability or any other liability insurance deemed necessary because of the
28 nature of this contract.

1 B. Automobile Liability

2 Comprehensive Automobile Liability Insurance with limits of not less than One Million
3 Dollars (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage should
4 include any auto used in connection with this Agreement.

5 C. Professional Liability

6 If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W.,
7 M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less than One
8 Million Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual
9 aggregate.

10 D. Worker's Compensation

11 A policy of Worker's Compensation insurance as may be required by the California
12 Labor Code.

13 Additional Requirements Relating to Insurance

14 EXCESS/UMBRELLA INSURANCE: A combination of primary and excess/umbrella
15 insurance may be used by CONTRACTOR to meet the required limits of insurance.

16 CONTRACTOR shall obtain endorsements to the Commercial General Liability insurance
17 naming the County of Fresno, its officers, agents, and employees, individually and collectively, as
18 additional insured, but only insofar as the operations under this Agreement are concerned. Such
19 coverage for additional insured shall apply as primary insurance and any other insurance, or
20 self-insurance, maintained by COUNTY, its officers, agents and employees shall be excess only
21 and not contributing with insurance provided under CONTRACTOR's policies herein. This
22 insurance shall not be cancelled or changed without a minimum of thirty (30) days advance written
23 notice given to COUNTY.

24 CONTRACTOR hereby waives its right to recover from COUNTY, its officers, agents, and
25 employees any amounts paid by the policy of worker's compensation insurance required by this
26 Agreement. CONTRACTOR is solely responsible to obtain any endorsement to such policy that
27 may be necessary to accomplish such waiver of subrogation, but CONTRACTOR's waiver of
28 subrogation under this paragraph is effective whether or not CONTRACTOR obtains such an

1 endorsement.

2 Within Thirty (30) days from the date CONTRACTOR signs and executes this Agreement,
3 CONTRACTOR shall provide certificates of insurance and endorsement as stated above for all of
4 the foregoing policies, as required herein, to the County of Fresno, (Name and Address of the
5 official who will administer this contract), stating that such insurance coverage have been obtained
6 and are in full force; that the County of Fresno, its officers, agents and employees will not be
7 responsible for any premiums on the policies; that for such worker's compensation insurance the
8 CONTRACTOR has waived its right to recover from the COUNTY, its officers, agents, and
9 employees any amounts paid under the insurance policy and that waiver does not invalidate the
10 insurance policy; that such Commercial General Liability insurance names the County of Fresno,
11 its officers, agents and employees, individually and collectively, as additional insured, but only
12 insofar as the operations under this Agreement are concerned; that such coverage for additional
13 insured shall apply as primary insurance and any other insurance, or self-insurance, maintained
14 by COUNTY, its officers, agents and employees, shall be excess only and not contributing with
15 insurance provided under CONTRACTOR's policies herein; and that this insurance shall not be
16 cancelled or changed without a minimum of thirty (30) days advance, written notice given to
17 COUNTY.

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

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

24 12. **AUDITS AND INSPECTIONS:** The CONTRACTOR shall at any time during
25 business hours, and as often as the COUNTY may deem necessary, make available to the
26 COUNTY for examination all of its records and data with respect to the matters covered by this
27 Agreement. The CONTRACTOR shall, upon request by the COUNTY, permit the COUNTY to
28 audit and inspect all of such records and data necessary to ensure CONTRACTOR'S compliance

1 with the terms of this Agreement.

2 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be
3 subject to the examination and audit of the Auditor General for a period of three (3) years after
4 final payment under contract (Government Code Section 8546.7).

5 13. **NOTICES**: The persons and their addresses having authority to give and receive
6 notices under this Agreement include the following:

7 COUNTY
8 COUNTY OF FRESNO
9 Director, Department of Public Health
1221 Fulton Street
Fresno, CA 93721

CONTRACTOR
Priority Dispatch Corp
Attn: Legal Dept.
110 S. Regent Street, Suite 500
Salt Lake City, UT 84111

10 All notices between the COUNTY and CONTRACTOR provided for or permitted under this
11 Agreement must be in writing and delivered either by personal service, by first-class United States
12 mail, by an overnight commercial courier service, or by telephonic facsimile transmission. A notice
13 delivered by personal service is effective upon service to the recipient. A notice delivered by first-
14 class United States mail is effective three COUNTY business days after deposit in the United
15 States mail, postage prepaid, addressed to the recipient. A notice delivered by an overnight
16 commercial courier service is effective one COUNTY business day after deposit with the overnight
17 commercial courier service, delivery fees prepaid, with delivery instructions given for next day
18 delivery, addressed to the recipient. A notice delivered by telephonic facsimile is effective when
19 transmission to the recipient is completed (but, if such transmission is completed outside of
20 COUNTY business hours, then such delivery shall be deemed to be effective at the next
21 beginning of a COUNTY business day), provided that the sender maintains a machine record of
22 the completed transmission. For all claims arising out of or related to this Agreement, nothing in
23 this section establishes, waives, or modifies any claims presentation requirements or procedures
24 provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of
25 the Government Code, beginning with section 810).

26 14. **GOVERNING LAW**: Venue for any action arising out of or related to this Agreement
27 shall only be in Fresno County, California.

28 The rights and obligations of the parties and all interpretation and performance of this

1 Agreement shall be governed in all respects by the laws of the State of California.

2 15. **DISCLOSURE OF SELF-DEALING TRANSACTIONS**

3 This provision is only applicable if the CONTRACTOR is operating as a corporation (a
4 for-profit or non-profit corporation) or if during the term of the agreement, the CONTRACTOR
5 changes its status to operate as a corporation.

6 Members of the CONTRACTOR's Board of Directors shall disclose any self-dealing
7 transactions that they are a party to while CONTRACTOR is providing goods or performing
8 services under this agreement. A self-dealing transaction shall mean a transaction to which the
9 CONTRACTOR is a party and in which one or more of its directors has a material financial
10 interest. Members of the Board of Directors shall disclose any self-dealing transactions that
11 they are a party to by completing and signing a Self-Dealing Transaction Disclosure Form,
12 attached hereto as Exhibit B and incorporated herein by reference, and submitting it to the
13 COUNTY prior to commencing with the self-dealing transaction or immediately thereafter.

14 16. **FORCE MAJEURE**: Except for obligations to make payment, neither Party shall
15 be liable to the other for any failure to perform its obligations due to any cause beyond its
16 reasonable control.

17 17. **SEVERABILITY**

18 The provisions of this Agreement are severable. The invalidity or unenforceability of any
19 one provision in the Agreement shall not affect the other provisions.

20 18. **CONFIDENTIALITY**: All services performed by CONTRACTOR under this Agreement
21 shall be in strict conformance with all applicable Federal, State of California and/or local laws and
22 regulations relating to confidentiality.

23 19. **ENTIRE AGREEMENT**: This Agreement constitutes the entire agreement between
24 the CONTRACTOR and COUNTY with respect to the subject matter hereof and supersedes all
25 previous Agreement negotiations, proposals, commitments, writings, advertisements, publications,
26 and understanding of any nature whatsoever unless expressly included in this Agreement.


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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day
and year first hereinabove written.

CONTRACTOR


(Authorized Signature)


Brent E. Hawkins, Vice President
& General Counsel

110 S. Regent Street, Suite 500

Salt Lake City, UT 84111

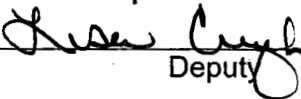
Mailing Address

COUNTY OF FRESNO


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

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

By:


Deputy

FOR ACCOUNTING USE ONLY:

ORG No.: 56201693
Account No.: 7309
Requisition No.:

1 **EXHIBIT A**

2 **END USER LICENSE AGREEMENT**

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

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

23 **3. Stations, Licensed Stations, Number of Licensed Stations.** “Stations” are computers,
24 terminals, nodes, computer aided dispatch stations, or workstations in YOUR possession
25 and/or control. “Licensed Stations” are YOUR Stations that have access to the Software and for
26 which YOU have paid the applicable License Fee to PDC for this License to use the Software.
27 The “Number of Licensed Stations” is specified in YOUR License Fee invoice or quote from
28 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 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*

1 *code or trade secrets of the Software, or alter the Software or create any derivative work or*
2 *product based upon, or derived from the PDS, Software or Documentation; or (b) transfer,*
3 *disclose, rent, lease, loan, publicly display, adapt, timeshare, sublicense, duplicate, distribute,*
4 *translate, modify, or alter the Software or any copy thereof, including, without limitation, any*
5 *deletion from or addition to the Software, or allow third party access to or use of the Software or*
6 *any copy thereof in any manner; or (c) use the Software in any way not specifically provided*
7 *under this license. Modification of the Software by implementing Updates provided by PDC*
8 *under this Agreement, and by the addition of local response configurations to PDS dispatch*
9 *codes (as provided for elsewhere in this Agreement) are not in breach of this section. YOU*
10 *acknowledge that YOUR material breach of this Agreement would provide PDC the option to*
11 *terminate this License and/or withhold Service and Support, and would also cause irreparable*
12 *harm to PDC that could not be adequately compensated by damages alone. Consequently,*
13 *PDC may seek and obtain, without posting any bond or providing any other security, immediate*
14 *preliminary and permanent injunctions against YOUR breach or threatened breach of the*
15 *Agreement, in addition to any and all other legal and equitable remedies available, and YOU*
16 *hereby consent to the obtaining of such injunctive relief. In addition to other remedies that may*
17 *be available to PDC, PDC shall be entitled to recover any profits made by YOU as a result of the*
18 *breach of this Agreement or the infringement of its intellectual property. Any derivative product,*
19 *whether created knowingly or unknowingly, shall be the property of PDC.*

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

22 **9. Taxes.** Any sales, use, withholding and other taxes, duties or government assessments
23 relating to this Agreement or the License, or to the payments or transactions hereunder, shall
24 be paid by YOU, in addition to all other specific payments required to be made by YOU under
25 this Agreement. If any taxes or amounts are withheld or deducted by any government or
26 authority from any license fees or payments to PDC, YOU shall be obligated to pay the taxes or
27 amounts withheld or deducted so that the license fees and payments actually received by PDC
28 are the full amounts contemplated by this Agreement before such withholding or deduction. If

1 necessary, the license fees and amounts shall be increased (“grossed up”) so that the license
2 fees and payments actually received by PDC after such withholding and deductions are the full
3 amounts. This section does not apply to U.S. federal or state taxes that may be imposed upon
4 PDC on the basis of net corporate income.

5 **10. Use of Software; Updates.** YOU may only use the Software in compliance with this
6 Agreement and the Documentation. PDC may issue Updates or revisions to the Software and
7 bulletins or advisories concerning use of the Software (see also, “Updates” in the ESP). YOUR
8 failure to implement such PDC-provided Updates or revisions within 90-days of PDC providing
9 same to YOU will constitute a material breach of this Agreement, giving PDC the right to
10 terminate the License for cause and/or to withhold further Service and Support, and YOU hereby
11 agree to indemnify and hold PDC and the IAED harmless from and against any damages and
12 liabilities that may arise from failure on YOUR part to implement such Updates (see also, ESP
13 Section titled “Unsafe Practices”). Updates to the Software received by YOU from PDC shall be
14 covered as “Software” under this Agreement, as provided above, in the section of this
15 Agreement entitled “Software.” An exception to this general rule is provided immediately below
16 with respect to refunds, in the section entitled “Limited Software Warranty.”

17 **11. Limited Software Warranty.** PDC warrants that if the Software does not materially conform
18 with its descriptions in the Documentation and PDC’s published specifications, and if YOU
19 report in writing to PDC within 30 days after delivery of the Software to YOU any material failure
20 of the Software to so conform with the Documentation or specifications, then PDC will, at its
21 sole option, and at no cost to YOU, either: *(a) remedy the failure or provide a reasonable work-*
22 *around solution; or (b) offer to refund License Fees and any pre-paid fees for ESP that have*
23 *been received by PDC for the non-conforming Software.* The refund offer does not apply to
24 free Software Updates provided by PDC under this Agreement. If a refund is offered, YOU will
25 have 20 days from the date of the offer to either accept the refund or accept the Software “as-
26 is.” If YOU elect to accept the Software as-is, then PDC’s warranties will be deemed satisfied
27 and this Agreement will not terminate. If YOU accept the refund offer, YOU must return the
28 Software to PDC within 20 days of the date of the offer; the License will terminate; and YOU

1 must certify in writing to PDC that YOU have not retained in YOUR possession or control, any
2 copies of the Software and that YOU have not transferred or disclosed any Software to any
3 third party. Then PDC will refund to YOU the License Fee and any prepaid ESP Fees received
4 by PDC from YOU hereunder. THIS SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY AND
5 PDC'S SOLE AND EXCLUSIVE LIABILITY WITH RESPECT TO ANY BREACH OF THIS
6 WARRANTY.

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

16 **13. DISCLAIMER OF OTHER PDC WARRANTIES.** PDC MAKES NO WARRANTY,
17 REPRESENTATION OR PROMISE NOT EXPRESSLY SET FORTH IN THIS AGREEMENT.
18 EXCEPT FOR THE LIMITED WARRANTY, SOFTWARE IS PROVIDED "AS IS" WITHOUT
19 WARRANTY OF ANY KIND. PDC DISCLAIMS AND EXCLUDES ANY AND ALL IMPLIED
20 WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY,
21 FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. PDC DOES NOT
22 WARRANT THAT THE SOFTWARE OR DOCUMENTATION WILL SATISFY YOUR
23 REQUIREMENTS OR THAT THEY ARE WITHOUT ERROR, OMISSION, DEFECT OR
24 DEFICIENCY, OR THAT THE OPERATION OF SOFTWARE WILL BE UNINTERRUPTED OR
25 ERROR FREE.

26 **14. LIMITATION ON PDC LIABILITY.** THE AGGREGATE LIABILITY OF PDC ARISING FROM
27 OR RELATING TO THIS AGREEMENT OR THE SOFTWARE, REGARDLESS OF THE FORM
28 OF ACTION OR CLAIM, WHETHER CONTRACT, WARRANTY, TORT, STRICT LIABILITY,

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

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

1 AGREE TO BE BOUND BY THIS AGREEMENT AND THESE PROVISIONS AND
2 DISCLAIMERS.

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

6 **17. Termination.** Termination of this Agreement shall be in accordance with Section 5 of the
7 Agreement. Subsequent to termination the decommission process shall take place as follows:

8 (a) Decommission Process. Decommissioning of the PDS can be very extensive.
9 Customer shall contact PDC at least 90-days before Customer plans on using an alternative
10 dispatch product. At that point, PDC shall provide Customer with more detailed information
11 regarding the decommission process. Part of the Decommission process will involve collecting all
12 PDC intellectual Property and exporting PDS data in a format that will give Customer access to
13 historical records. In order to successfully decommission the PDS, Customer understands that
14 PDC will come on site at their location and Customer must provide a dedicated person (generally
15 an I.T. person) to PDC to allow for the successful decommissioning of the PDS. After the
16 decommission process, any PDC products, intellectual property, or materials found shall be
17 immediately forwarded to PDC.

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

21 **19. Construction.** This Agreement represents the wording selected by the Parties to define
22 their agreement and no rule of strict construction shall apply against either Party. Whenever
23 the context reasonably permits, the singular shall include the plural, the plural shall include the
24 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.
 - 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.**
 1. Client must register as described in Section 2 below.
 2. 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.
 3. All Licensed Products that a Customer must have the same ESP.
 4. PDC reserves the right to terminate this Agreement if YOU are not current on YOUR financial obligations to PDC.
- Customer Obligations:**
1. Customer's hardware and operating systems must meet the minimum system requirements provided by PDC.
 2. Customer is solely responsible for any required adjustments or updates to its hardware or operating system software required to accommodate Updates or Upgrades of the Software.
 3. Customer shall ensure availability of its own technical support personnel so PDC can fulfill its service obligations.
 4. 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.

5. Customer shall carry out any instructions on troubleshooting or circumvention as provided by PDC.

6. Customer is solely responsible for ensuring the compatibility of non-PDC products with PDC products.

7. Customer is solely responsible for ensuring its systems, software, and data are adequately backed up. PDC shall not be liable for any lost data.

8. Customer shall provide for any other requirements reasonably specified by PDC that relate to the rendition of the services to be met.

9. As necessary, Customer will permit PDC with remote access to its systems to provide any required or necessary support.

10. If Customer fails to fulfill its obligations outlined 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.

11. 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. Updates & 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/int_notification.php. YOU acknowledge that failure to register

1 may result in YOU not receiving urgent and vital communications about the Licensed Products.
2 As part of its registration obligation, Client agrees to keep all its registration information current
3 and up-to-date and understands it is solely responsible for ensuring it receives Software
4 notifications.

5 a. **Updates** When PDC determines that particular improvements, modifications or
6 enhancements may be useful as an Update to the current Version, PDC may issue an
7 Update to licensees who have maintained their online Software notification registration and
8 ESP current as provided herein. Client shall, within 90 days of an Update release from
9 PDC, implement such Update. Client's failure to register for Software notifications and
10 implement Updates, as provided here, would constitute a Breach of the EULA, giving cause
11 for PDC to terminate this Agreement or withhold further Service and Support. Such
12 Updates may be accompanied by instructions for updating the Software. Installation of an
13 Update in accordance with such instructions is not a modification prohibited by the section
14 of the Agreement titled "Use and Protection of the Licensed Product(s) and PDS."

15 b. **New Versions** When PDC determines that substantial revisions to the Software (among
16 other factors) may justify it, PDC may issue a new Version of the Software ("New Version").
17 PDC may thereafter cease issuing Updates for versions and editions preceding the New
18 Version. Said New Version then becomes the current version and edition of the Software,
19 but is not licensed to YOU, unless it is part of YOUR ESP plan. In the event New Versions
20 are part of YOUR ESP plan, the New Version shall be governed by PDC's then-current
21 license Agreement. If New Version are not part of YOUR ESP plan, then the New Version
22 constitutes a new product that can only be obtained through the purchase of a new license
23 from PDC that is licensed under a new agreement with PDC. During an introductory period,
24 licensees who are current in their registration and service plan with the preceding version
25 may be offered, for a reduced fee, a license to use the New Version. The New Version will
26 be governed by PDC's then-current license agreement.
27
28

1 *Extended Service will not be available indefinitely after a New Version of the Software is*
2 *released to replace a prior version. Customers that continue to use prior versions after a New*
3 *Version has been released are solely responsible for their continued use, and for the results*
4 *obtained from such continued use, of any prior version. YOU hereby agree to indemnify and*
5 *hold PDC and the IAED harmless from and against any damages and liabilities that may arise*
6 *from YOUR election not to implement any New Version after it has been released.*

7 **3. Responsibility.** Client assumes full responsibility for ascertaining the suitability of, and for its
8 selection of, the Software, as well as for its installation, implementation and use, and for the
9 results obtained from it. YOU are responsible for decisions made and actions taken based on
10 the Software. The Software is designed and intended for use by emergency dispatch
11 professionals trained and experienced in the uses and limitations of computer software in
12 general, and more specifically, of the emergency dispatch system(s) the Software is designed
13 for as a quality management tool.

14 **4. Research Data Sharing.** In the interests of advancing the state-of-the-art in emergency
15 dispatching through effective use of and improvements to the Software, Client shall, in timely
16 response to PDC's reasonable written requests, provide PDC with copies, on disk or tape, of
17 the data associated with the functioning of the Software. PDC shall use such data in
18 compliance with applicable government regulations and restrictions (including, without
19 limitation, HIPAA in the U.S.), and may use such data for research and development purposes.
20 It will not make any external, public use or release of such research data without the prior
21 written consent of Client. Furthermore, PDC will not request data in a manner that includes any
22 names or personal identifying information or that indicates Client as the source of the data.
23 Additionally, by sharing data with PDC, YOU allow PDC to share the data with the IAED for the
24 purpose of improving and advancing dispatching.

25 **5. Expert System Disclosure.** This expert system is designed for use by Emergency
26 Dispatchers or calltakers (EDs) who have been trained and certified in the use of the PDS and
27 who function in a prescribed PDS quality assurance environment. It is not a novice system. The
28 system design envisions occasions when even the trained ED will have to make a subjective

1 decision regarding a caller's response and make the most correct selection from the list of
2 choices presented. The design of this system incorporates current professional and logic
3 accuracy. Of necessity, however, it also reflects some subjective opinions of professional
4 experts and programmers with which others may reasonably disagree. The system and its
5 necessary maintenance components must be considered and approved by local control entities
6 and ED agency administration, prior to implementation and on-line use by trained EDs. The
7 system also envisions that, when appropriate, trained EDs will have the option of "overriding" a
8 system-recommended choice for enhanced patient safety and that they will choose the "most
9 appropriate" telephone treatment options from available menus. New information may change
10 the complexion of the emergency during the call as EDs validate caller responses or treatment.
11 This system allows the trained ED to "reconfigure" response levels based on new information.
12 With the foregoing in mind, this system cannot reasonably be expected to predict exact
13 outcomes or unerring ED performance in all cases. The designers recommend that quality
14 assurance mechanisms be put in place that include review of each of these "special choice"
15 situations for ED correctness and consistency. This system cannot, under this license, ever be
16 used by non-IAED-certified individuals. Failure to maintain an adequate number of certified
17 personnel will void this license and all materials covered hereunder must be immediately
18 returned.

19 **6. Modification of Software, Cards, or PDS.** Other than as specifically provided in this ESP,
20 YOU shall not modify, change, or alter the PDS Protocols or anything on the Software, Cards,
21 or PDS without the prior, express, written consent of PDC. This ESP outlines the scientific
22 process of protocol modification, which is performed by the College of Fellows of the IAED (see
23 sections titled "Changing the PDS" and "Accepted Process for PDS Modification" in this ESP).
24 Implementation of Updates, as provided in the section of this ESP titled "Updates & New
25 Versions," qualifies as a modification, change, or alteration with PDC's express, written, prior
26 consent. Any unauthorized change made, and/or implemented in the Software, Cards, or PDS
27 by the Client is a material Breach of this EULA, giving cause for PDC to terminate this
28 Agreement or withhold further Service and Support.

1 **7. *Derivative Products.*** In the event any PDS client creates, knowingly or unknowingly, any
2 derivative product of the PDS, such derivative product shall be owned by PDC and its use must
3 be discontinued and the derivative (including all copies or drafts of such work) sent to PDC
4 within 10 days of PDC's written request to do so.

5 **8. *Customization of Responses.*** Authorized customization of the PDS consists of matching
6 Priority Dispatch Determinant levels (A, B, C, D) with locally determined response capabilities
7 of equipment and professional personnel. This is limited to additions to the blank "Response"
8 section (bottom right) of all protocols. The responses to be inserted in said "Response" section
9 are determined solely by the licensed client. Local ED authorities are authorized and within
10 their license rights to so add responses to the specified bottom right section of the relevant
11 cards, without any requirements to either notify PDC or to coordinate these particulars with
12 PDC (unless required to do so by separate consulting agreement), and PDC bears no
13 responsibility or liability for actual local responses selected or used. Additionally, the IAED
14 allows the designated local law enforcement administrator, or their designee, to edit current
15 Critical EPD Information (CEI) text to better address locally defined performance expectations.
16 Adding CEI text shall preserve the intent of the original CEI and vary only by providing more
17 specific instructions for actions EPD's should take. CEI text shall meet or exceed the standard
18 of practice in law enforcement and neither PDC nor the IAED bears any responsibility or liability
19 for CEI text used and relied upon.

20 **a. *Documentation.*** The approval and customizations above are generally finalized and
21 documented through Dispatch Review Committee and Dispatch Steering meetings. It is
22 YOUR responsibility to ensure sign off signatures and authorizations are obtained on record
23 in writing, and that all ED personnel are training in their proper use.

24 **9. *Changing the PDS.*** All written text and printed materials in the PDS, including, without
25 limitation, Interrogation Questions, Dispatch Determinants, Pre-Arrival Instructions, Post-
26 Dispatch Instructions and Additional Information are integral to the PDS. Licensed clients are
27 NOT AUTHORIZED TO MAKE CHANGES TO THE PDS. Changes are made only by the
28

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:

i. 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 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.

ii. **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

1 be established and meet at least quarterly to review, evaluate, and approve the
2 application of policies or procedures affecting PDS operations.

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

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

12 v. **DISPATCHER PERFORMANCE EVALUATION AND PROTOCOL COMPLIANCE:** It is
13 required that EDs closely comply with the PDS interrogation, prioritization coding, and
14 scripts. To this purpose, the Quality Improvement and Management Program must
15 include continuous case review and evaluation according the IAED’s Center of
16 Excellence minimum performance requirements, which are available on its website. EDs
17 not complying must be officially notified of the findings, retrained, and, if necessary
18 eventually disciplined. Non-compliance to the PDS has been demonstrated to
19 significantly decrease its effectiveness and safety and shall not be tolerated by managers
20 and employers. In the interest of public safety, the protocol must be followed.

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

23 **10. Accepted Process for PDS Modification.** In 1988, the IAED was formed as a scientific
24 professional organization for Emergency Dispatching. Within the Academy’s structure exists the
25 College of Fellows — a select group of professional dispatch, public safety and emergency
26 experts that has adopted the following mission statement: “To conduct an on-going review of
27
28

the current standards of care and practice in Emergency Dispatch 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 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-D-1). In this way, the coding 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
- 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.

1 ii. CAD (Computer Aided Dispatch), RMS (Record Management System), JMS
2 (Jail Management System), and NCIC (National Crime Information Center) should
3 not be accessible on this dedicated physical or virtual workstation.

4 iii. PDC will audit calls remotely using SecureLink. An additional AQUA®
5 software License per discipline will be provided by PDC for the National Q
6 Reviewer's access for the term of contract, along with an accompanying voice
7 logger integration license.

8 iv. Customer understands that they must always update to the latest version of
9 AQUA.

10 v. If there is a Customer related issue (technical or otherwise) that prevents the
11 National Q Reviewer from reviewing cases, including providing the associated
12 reporting, PDC will only be responsible for two weeks of case review volume from
13 the date the issue is resolved looking backward, and case review going forward.

14 **c. Quality Assurance Process:**

15 i. QA shall be done according to the IAED standards for Accreditation
16 http://www.emergencydispatch.org/standards_for_accreditation).

17 ii. Customer will receive weekly completed QA cases in AQUA based on the
18 National Q timeline established by the parties. This will allow Customer to give
19 appropriate and timely feedback.

20 iii. Customer must identify an individual to provide case review feedback to
21 dispatchers as provided to them by the National Q reviewer. This individual must
22 be certified by the IAED as an ED-Q. Customer's contact person (ED-Q) will work
23 directly with the National Q representative. The Customer's ED-Q will provide any
24 quality improvement feedback and training to Customer's dispatchers/calltakers
25 based on the feedback they receive from the National Q Reviewer. In other
26 words, the customer ED-Q will work with Customer's dispatchers/calltakers to
27 help them understand structured protocol utilization, address protocol compliance
28

1 and performance improvement requirements to become a more effective
2 dispatcher/calltaker.

3 iv. In order to ensure the integrity of the QA Service, any feedback provided by
4 the Customer's ED-Q to its dispatchers/calltakers shall not be contrary or
5 inconsistent with the National Q Reviewer's audit and comments. If the ED-Q
6 does not understand or agree with the National Q review of the call or believes a
7 mistake or miscommunication has occurred the ED-Q should inform the
8 dispatcher/calltaker that they will research the issue and contact the National Q
9 representative, so a resolution can be made through the appeals process. Once it
10 has gone through the appeals process the decision is final.

11 **16. Definitions.** This section contains more detailed definitions of certain terms used in this
12 EULA

13 *"Cards"*

14
15 The manual version of a PDS in the form of printed reference cards or in the form of electronic
16 tablets provided by PDC to Client under this EULA.

17
18 *"Client," "Customer," "Agency," "Licensee", "YOU", "YOU" or "YOUR"*

19 County of Fresno. The end user licensed to use the licensed Software under the Agreement.
20 This is the end user who enters into the Agreement with PDC.

21
22 *"certification" and "recertification"*

23 When used in this agreement, certification and recertification mean specifically by the IAED.

24
25 *"ED", Emergency Dispatch and/or Emergency Dispatcher.*

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

1 *“PDS”, Priority Dispatch System.*

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

6
7 *“Update”*

8 An Update represents a collection of improvements, modifications, or enhancements to the
9 Cards, Software or PDS within a Version (as this latter term is defined below). Generally,
10 Updates are provided to all currently licensed and registered licensees under a n Extended
11 Service Plan with PDC. An Update is designated by the number to the right of the decimal point
12 in the release number of a Software release (e.g., Release 12.2 would an Update from Release
13 212.1). A Version may include a plurality of Updates (e.g., 11.1, 11.2 and 11.3 would be
14 separate Updates within Version 11).

15
16 *“Version”*

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

23
24 **17. Additional PDC Products.** Beyond the products and services discussed in this EULA,
25 PDC also provides additional products/services to the Customer including, but not limited to,
26 Field Responder Guides, Quality Assurance Guides, and Send Cards. As applicable, terms of
27 this EULA also apply to the additional products and services provided by PDC to the Customer.