Uptrust
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SERVICES AGREEMENT

This Agreement ("Agreement") is entered into on April 14, 2020, by and between Uptrust, Inc., a Delaware Public Benefit Corporation ("Service Provider") with an office at 1 Sutter Street, Suite 350, San Francisco, CA 94104, and the County of Fresno, through its Public Defender's Office ("Client"), with an address of 2135 Fresno St # 100, Fresno, CA 93721 (each, a "party"; collectively, the "parties"), and is retroactively effective on [October 1, 2019] (the "Effective Date").

Client enlists Service Provider to supply to Client certain services ("Services") pursuant to one or more exhibits to this Agreement. Service Provider shall provide the Uptrust System, which includes a text messaging system for designated clients of the Fresno County Public Defender to facilitate court appearances through client engagement and text message reminders.

For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and intending to be legally bound, the parties agree as follows:

1. **ENGAGEMENT** Client hereby engages Service Provider to provide Services as set forth in Exhibit A, attached and incorporated by this reference, and Service Provider agrees to provide such Services to Client, at the charges set forth therein.

2. **PAYMENT; SUSPENSION OR TERMINATION OF SERVICES** In no event shall compensation paid to Service Provider for services performed under this Agreement during the initial term exceed $0. In the event the Agreement is renewed, in no event shall compensation paid to Service Provider for the total possible term exceed $8,400. It is understood that all expenses required for Service Provider's performance of services under this Agreement shall be borne by Service Provider.
   Monthly charges will be invoiced at the beginning of each month in which the Services are to be provided. Service Provider shall submit monthly invoices in triplicate to the County of Fresno, Public Defender's Office, Attn: Accounting. The Client shall pay each invoice within 45 days of receipt of the invoice. In addition to any other remedies it may have, Service Provider shall have the right to suspend the performance of Services, or to terminate this Agreement, if Client fails to make payment within the time permitted for doing so under this Agreement.

3. **TERM** The term of this Agreement shall begin on the Effective Date, and will continue for eighteen months (18), with one (1) option to renew for an additional term of twelve months (12) of licensing, unless terminated earlier in accordance with this Agreement. The County Purchasing Manager is authorized to execute such written approval of renewal on behalf of Client, based on Service Provider's satisfactory performance.

4. **TERMINATION**
    a. Either party may terminate the Agreement if the other party breaches any of its terms, if such breach is capable of cure, and if that party fails to cure such breach within thirty (30) days of receiving written notice specifying the breach.
    b. The terms of this Agreement, and the services to be provided hereunder, are contingent on the approval of funds by the appropriating government agency. Should sufficient funds not be allocated, the services provided may be modified, or this Agreement terminated, at any time by giving the Service Provider thirty (30) days' advance written notice.

5. **DISCLAIMER OF WARRANTIES** Services furnished under this Agreement are provided "as is" and, unless otherwise expressly stated in this instrument, without representations or warranties of any kind, either express or implied. To the fullest extent permitted by law, Service Provider disclaims all warranties, express, implied or statutory, including, but not limited to, implied warranties of title, non-infringement, merchantability, and fitness for a particular purpose. Service Provider does not guarantee that Client's use of the Services will produce any specific results**.** Service Provider does not warrant that use of software or equipment furnished by Service Provider will be uninterrupted, error-free, non-infringing, or secure, or that defects will be corrected.

6. **LIMITATION OF LIABILITY** In no event shall Service Provider be liable to the Client or any other party for any special, exemplary, incidental, or consequential damages, including but not limited to lost profits, whether arising out of contract, tort, strict liability or otherwise. In no event shall Service Provider's liability to Client exceed amounts paid by Client to Service Provider during the twelve months preceding the date upon which a claim arose. Service Provider shall not be liable to Client for any failure or delay caused by events beyond Service Provider's control, including, without limitation, Client's failure to furnish necessary information requested by Service Provider. The limitations provided in this Section 6 shall not apply to claims by Client for indemnification pursuant to Section 7, herein.

7. **HOLD HARMLESS** Service Provider agrees to indemnify, save, hold harmless, and at Client's request, defend the Client, its officers, agents, and employees from any and all costs and expenses (including attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to Client in connection with the performance, or failure to perform, by Service Provider, its officers, agents, or employees under this Agreement, and from any and all costs and expenses (including attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the performance, or failure to perform, of Service Provider, its officers, agents, or employees under this Agreement.
   The provisions of this Section 7 shall survive termination of this Agreement.

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

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

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

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

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

Additional Requirements Relating to Insurance:

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

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

Within Thirty (30) days from the date CONTRACTOR signs and executes this Agreement, CONTRACTOR shall provide certificates of insurance and endorsement as stated above for all of the foregoing policies, as required herein, to the County of Fresno, (Name and Address of the official who will administer this contract), stating that such insurance coverage have been obtained and are in full force; that the County of Fresno, its officers, agents and employees will not be responsible for any premiums on the policies; that such Commercial General Liability insurance names the County of Fresno, its officers, agents and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned; that such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees, shall be excess only and not contributing with insurance provided under CONTRACTOR's policies

herein; and that this insurance shall not be cancelled or changed without a minimum of thirty (30) days advance, written notice given to COUNTY.

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

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

9. **ACTIONS** No action, regardless of form (including in contract, tort or otherwise), arising in connection with the performance of this Agreement may be brought by either party more than one (1) year after the termination of this Agreement.

10. **PUBLICITY** Service Provider may link from Service Provider's website to Client's website and may include Client's name and general case study information within Service Provider's marketing materials. Any other use of Client's name and content (including Client's website content) will be subject to Client's prior written approval, which may be in the form of an e-mail, and which will not be unreasonably withheld, conditioned, or delayed.

11. **CONFIDENTIALITY** Any Confidential Information provided to or developed by either Party in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by such Party without the prior written approval of the other Party. For purposes of this Agreement, "Confidential Information" means information not generally known or available in the public domain, information identified as Confidential Information by either party, and information entrusted to either Party in confidence by third parties. This confidentiality provision shall survive the termination of this Agreement. Confidential Information shall not include information that:

    - At the time of disclosure or thereafter becomes published or otherwise part of the public domain without breach of this Agreement by either Party;
    - Is subsequently disclosed to a Party by a third party who has the right to make such disclosure;

- Is developed by a Party independently of Confidential Information or other information received from the other Party and such independent development can be properly demonstrated by such Party;
- Is necessary to be disclosed to agents, consultants, affiliates, and/or other third parties for the services to be provided in accordance with this Agreement on the condition that such third parties agree to be bound by the confidentiality obligations contained in this Agreement; or
- Is required to be disclosed by law, including the California Public Records Act, Government Code § 6250 et. seq., or court order.

12. **IP OWNERSHIP** Client hereby grants to Service Provider a perpetual, personal, nonexclusive, non-transferable, non-sublicensable license to use any data generated through the use of the Uptrust System (other than personally identifiable data) for the term of this Agreement for the sole purpose of improving the services of Service Provider. No license, express or implied, is granted except as provided herein. Title to the Service Provider's software and the Uptrust System and all copies thereof shall be and remain in Contractor, and no title to or ownership of the Service Provider software or the Uptrust System or any portion thereof is conveyed or transferred to the County.

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

CLIENT	SERVICE PROVIDER
County of Fresno	Uptrust
Office of the Public Defender	1 Sutter St, Ste 350
2135 Fresno St, Ste 100	San Francisco, CA 94104
Fresno CA 93721	

All notices between the Client and Service Provider provided for or permitted under this Agreement must be in writing and delivered either by personal service, by first-class United States mail, by an overnight commercial courier service, or by telephonic facsimile transmission. A notice delivered by personal service is effective upon service to the recipient. A notice delivered by first-class United States mail is effective three Client business days after deposit in the United States mail, postage prepaid, addressed to the recipient. A notice delivered by an overnight commercial courier service is effective one Client business day after deposit with the

overnight commercial courier service, delivery fees prepaid, with delivery instructions given for next day delivery, addressed to the recipient. A notice delivered by telephonic facsimile is effective when transmission to the recipient is completed (but, if such transmission is completed outside of Client business hours, then such delivery shall be deemed to be effective at the next beginning of a Client business day), provided that the sender maintains a machine record of the completed transmission. For all claims arising out of or related to this Agreement, nothing in this section establishes, waives, or modifies any claims presentation requirements or procedures provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

14. **AUDITS AND INSPECTIONS** The Service Provider shall at any time during business hours, and as often as the Client may deem necessary, make available to the Client for examination all of its records and data with respect to the matters covered by this Agreement. The Service Provider shall, upon request by the Client, permit the Client to audit and inspect all of such records and data necessary to ensure Service Provider's compliance with the terms of this Agreement.

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

15. **MISCELLANEOUS** This instrument, with attached exhibits, contains the entire agreement of the parties, and supersedes any previous agreement on the same subject matter between them. No amendments or variations of the terms and conditions of this agreement shall be valid unless the same are in writing and signed by all parties hereto. Client may not assign this Agreement without the permission of Service Provider. If any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein. The headings contained herein are for convenience of reference only, and are not to be used in interpreting this agreement. Any provision of this Agreement or an Addendum which expressly or by its nature is intended to survive its expiration or termination, including Client's payment obligations, will survive its expiration or termination.

16. **INDEPENDENT CONTRACTOR** Service Provider is an independent contractor, and nothing herein shall be construed as inconsistent with that relationship or status.

17. **GOVERNING LAW** This agreement shall be construed and enforced pursuant to the laws of the State of California. Venue for any action arising out of or related to this Agreement shall only be in Fresno County, California.

18. **DISCLOSURE OF SELF-DEALING TRANSACTIONS**
This provision is only applicable if the Service Provider is operating as a corporation (a for-profit or non-profit corporation) or if during the term of the Agreement, the Service Provider changes its status to operate as a corporation.
Members of the Service Provider's Board of Directors shall disclose any self-dealing transactions that they are a party to while Service Provider is providing goods or performing services under this Agreement. A self-dealing transaction shall mean a transaction to which the Service Provider is a party, and in which one or more of its directors has a material financial interest. Members of the Board of Directors shall disclose any self-dealing transactions that they are a party to by completing and signing a Self-Dealing Transaction Disclosure Form, attached hereto as Exhibit B and incorporated herein by reference, and submitting it to the COUNTY prior to commencing with the self-dealing transaction or immediately thereafter.

19. **COUNTERPARTS** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one document.

20. **ENTIRE AGREEMENT** This Agreement constitutes the entire agreement between the Service Provider and Client with respect to the subject matter hereof, and supersedes all previous Agreement negotiations, proposals, commitments, writings, advertisements, publications, 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.

SERVICE PROVIDER:

By: _____
JACOB SILLS
CHIEF EXECUTIVE OFFICER
UPTRUST

Date:

CLIENT:

By: _____
ERNEST BUDDY MENDES
CHAIRMAN OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF FRESNO

Date:

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

By: _____
Deputy

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EXHIBIT A

DESCRIPTION:
Provide Uptrust system to all clients of the Fresno County Public Defender to facilitate court appearances through client engagement and text message reminders.

DURATION OF SERVICES:
Under this agreement, Service Provider will provide its service for eighteen months with an option by Client to extend services for an additional twelve months. This includes completing an integration with Client's case management system, in-person training upon launch, as well as a customer support.

WHAT'S INCLUDED:

- Completion of integration with Client's IT system.
- Customized software to facilitate client communication and engagement.
- In-person training upon launch.
- Customized text message copy for Client.
- Weekly carrier checks to ascertain operability for all client phone numbers.
- Unlimited two-way text messaging for the duration of the agreement.
- 24-7 customer support and maintenance and in-person training by Service Provider.
- Real-time status reports re: text messages, Failure To Appear rates and other key metrics.
- Development of customized dashboard with Failure to Appear data and root causes.
- Ongoing dialogue and consulting around Failure to Appear reduction best practices.

COST:

- One-time integration and customization fee: $10,000 fee is waived.
- Cost of service: The discounted fee of $700 per month is waived for 18 months. After 18 months, Uptrust would continue to provide its service for the discounted rate of $700 per month for 12 months.

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EXHIBIT B

SELF-DEALING TRANSACTIONS DISCLOSURE