

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



**ITEM: 3.17  
(ID # 24598)**

**MEETING DATE:**  
Tuesday, June 04, 2024

**FROM :** EMERGENCY MANAGEMENT DEPARTMENT

**SUBJECT:** EMERGENCY MANAGEMENT DEPARTMENT: Ratify and Approve the Professional Services Agreement between EMD's Riverside County Emergency Medical Services Agency and Pediatric Emergency Standards, Inc. for the use of Handtevy Pediatric Resuscitation Systems Suite without seeking competitive bids for a Period of Performance of five years. All Districts. [Total Aggregate Cost: \$293,370 – 100% EMS Funds]

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the Professional Services Agreement #EMARC-2004-06/28 with Pediatric Emergency Standards, Inc. for the use of Handtevy Pediatric Resuscitation Systems Suite without seeking competitive bids for a period of (5) five years from April 30, 2024 through June 30, 2028; and
2. Authorize the Chair of the Board to execute the Agreement; and
3. Authorize the Director of Emergency Management Department (EMD), as approved by County Counsel, to sign amendments that exercise the options of the agreements, to include modifying the statements of work that stay within the intent of the agreements; and
4. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, based on the availability of fiscal funding to issue Purchase Orders for the service fees which do not exceed \$293,370 aggregate amount through June 30, 2028.

**ACTION:**

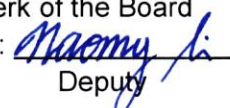
  
Bruce Barton, EMD Director 5/23/2024

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**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Gutierrez, seconded by Supervisor Perez and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Gutierrez  
Nays: None  
Absent: None  
Date: June 4, 2024  
xc: EMD

Kimberly A. Rector  
Clerk of the Board  
By:   
Deputy

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,  
STATE OF CALIFORNIA**

<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$ 84,504	\$ 48,459	\$ 293,370	\$ 0
<b>NET COUNTY COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>SOURCE OF FUNDS: 100% EMS Funds</b>			<b>Budget Adjustment:</b>	No
			<b>For Fiscal Year:</b>	23/24-27/28

**C.E.O. RECOMMENDATION:** Approve

**BACKGROUND:**

**Summary**

The Riverside County Emergency Medical Services Agency (REMSA) and Pediatric Emergency Standards, Inc. desire to enter into this Agreement for the use of Handtevy Pediatric Resuscitation Systems Suite. The Handtevy System is the leading integrated mobile software solution designed to provide paramedics rapid access to lifesaving dosing information while documenting every action in real time.

With the largest advanced life support provider in Riverside County currently utilizing Handtevy, its adoption and distribution county-wide will help REMSA achieve its goal of providing patient care, using a systems-based approach. The software is fully customizable and will conform to all REMSA-treatment protocols as adopted by REMSA at the direction of the REMSA Medical Director. Additionally, Handtevy is able to integrate with REMSA's electronic Patient Care Reporting (ePCR) system, allowing for documentation created within the Handtevy mobile application to be uploaded directly into the patient's care record via Bluetooth at the scene of the incident.

**Impact on Residents and Businesses**

The Handtevy Pediatric Resuscitation System suite provides paramedics with the opportunity to cognitively offload the task of performing weight-based medication calculations while treating sick and injured children, allowing them to focus on patient care, not medication calculations. This will effectively reduce medication errors, greatly reducing the risk of patient harm.

**Additional Fiscal Information**

As compared to other proprietary software programs and annual support/maintenance fees charged, the cost is significantly less expensive. Note: 7.75% Use Tax applied to measuring tapes (at \$930.00) and shipping and handling (at \$20.00) costs. Below is a breakdown of the cost for this software suite:

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STATE OF CALIFORNIA**

Description	FY23/24	FY24/25	FY25/26	FY26/27	FY27/28	Total
<b>One-time Costs:</b>						
Customization and Setup for Handtevy Mobile, Medication Software Access/Support, Length-Based Measuring Tape, Instructor Course and Certification	\$84,504.13	\$0	\$0	\$0	\$0	\$84,504.13
<b>Ongoing Costs:</b>						
Medication Management Software Access/Support	\$0	\$48,459.41	\$50,882.38	\$53,426.50	\$56,097.83	\$208,866.12
<b>Total Costs</b>	<b>\$84,504.13</b>	<b>\$48,459.41</b>	<b>\$50,882.38</b>	<b>\$53,426.50</b>	<b>\$56,097.83</b>	<b>\$293,370.25</b>

**ATTACHMENTS:**

1. Handtevy Agreement County of Riverside
2. SSJ 24-059 EMARC Handtevy
3. RCIT Procurement and Quote 1619 - HandTevy

*Melissa Curtis*  
 Melissa Curtis, Deputy Director of Purchasing and Fleet 5/23/2024

*Rebecca S Cortez*  
 Rebecca S Cortez, Principal Management Analyst 5/29/2024

*George Trindle*  
 George Trindle, Chief ASST COUNTY COUNSEL 5/23/2024

**PROFESSIONAL SERVICE AGREEMENT**

**for**

**HANDTEVY PEDIATRIC RESUSCITATION SYSTEM SUITE**

**between**

**COUNTY OF RIVERSIDE**

**and**

**PEDIATRIC EMERGENCY STANDARDS, INC.**





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This Agreement is made by and between Pediatric Emergency Standards, Inc., a Florida Corporation (herein referred to as "CONTRACTOR"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California (herein referred to as "COUNTY"). This Agreement is subject to CONTRACTOR's Terms and Conditions, which are attached hereto as Exhibit C. In the event that any term of CONTRACTOR's Terms and Conditions directly conflicts with any express term of this Agreement, the terms and provisions of this Agreement shall control to the extent of such conflict. The parties agree as follows:

**1. Description of Services**

**1.1** CONTRACTOR shall provide all services as outlined and specified in Exhibit A, Scope of Services, at the prices stated in Exhibit B, Payment Provisions, and shall comply with Exhibit C Software Level Agreement (SLA), and Exhibit D Mobile App Terms and Conditions.

**1.2** CONTRACTOR represents that it has the skills, experience, and knowledge necessary to perform under this Agreement and the COUNTY relies upon this representation. CONTRACTOR shall perform the services to the satisfaction of the COUNTY and in conformance to and consistent with the highest standards of firms/professionals in the same discipline in California.

**1.3** CONTRACTOR affirms this it is fully apprised of all of the work to be performed under this Agreement; and the CONTRACTOR agrees it can properly perform this work at the prices stated in Exhibit B. CONTRACTOR is not to perform services or provide products outside of the Agreement.

**1.4** Acceptance by the COUNTY of the CONTRACTOR's performance under this Agreement does not operate as a release of CONTRACTOR's responsibility for full compliance with the terms of this Agreement.

**2. Period of Performance**

**2.1** This Agreement shall be effective upon signature of this Agreement by both parties and continues in effect through June 30, 2028, unless terminated earlier. CONTRACTOR shall commence performance upon signature of this Agreement by both parties and shall diligently and continuously perform thereafter. The Riverside County Board of Supervisors is the only authority that may obligate the County for a non-cancelable multi-year agreement.

**3. Compensation**

**3.1** The COUNTY shall pay the CONTRACTOR for services performed, products provided, and expenses incurred in accordance with the terms of Exhibit B, Payment Provisions. Maximum payments by COUNTY to CONTRACTOR shall not exceed two hundred ninety-three thousand, three hundred seventy-one dollars (\$293,371) for the term of the agreement including all expenses. The COUNTY is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any

specified amount of services or products. Unless otherwise specifically stated in Exhibit B, COUNTY shall not be responsible for payment of any of CONTRACTOR's expenses related to this Agreement.

**3.2** No price increases will be permitted during the first year of this Agreement. All price decreases (for example, if CONTRACTOR offers lower prices to another governmental entity) will automatically be extended to the COUNTY. The COUNTY requires written proof satisfactory to COUNTY of cost increases prior to any approved price adjustment. After the first year of the award, a minimum of 30 days' advance notice in writing is required to be considered and approved by COUNTY. No retroactive price adjustments will be considered. Any price increases must be stated in a written amendment to this Agreement. The net dollar amount of profit will remain firm during the period of the Agreement. Annual increases shall not exceed a five percent (5%) increase for software support, cloud storage, access to devices and system enhancements and shall be subject to satisfactory performance review by the COUNTY and approved for budget funding by the Board of Supervisors, if required.

**3.3** CONTRACTOR shall be paid only in accordance with an invoice submitted to COUNTY by CONTRACTOR, and COUNTY shall pay the invoice within thirty (30) working days from the date of receipt of the invoice. Payment shall be made to CONTRACTOR only after services have been rendered or delivery of materials or products, and acceptance has been made by COUNTY. For software application(s), fees are paid in full on the Subscription Start Date and annually thereafter. CONTRACTOR will submit an invoice for subscription fee payment at minimum thirty (30) days prior to annual renewal date. For courses offered, COUNTY will pay fees per an applicable invoice at minimum twenty-four (24) hours prior to start of course. Invoices shall be prepared in duplicate. For this Agreement, send the original and duplicate copies of invoices to:

County of Riverside, Department of Emergency Management  
450 E. Alessandro Blvd.  
Riverside, CA 92508  
Attention: Bruce Barton, REMSA Director

- a) Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; bill-to and ship-to addresses of ordering department/division; Agreement number (EMARC-2004-06/28); quantities; item descriptions; unit prices; extensions; sales/use tax, if applicable; and an invoice total.
- b) Invoices shall be rendered as noted above.

**3.4** The COUNTY obligation for payment of this Agreement, and CONTRACTOR's obligation to perform beyond the current fiscal year end, is contingent upon and limited by the availability of COUNTY funding

from which payment can be made, and invoices shall be rendered as noted in Section 3.3. In the State of California, government agencies are not allowed to pay excess interest and late charges, per Government Code section 926.10. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, COUNTY shall immediately notify CONTRACTOR in writing, and this Agreement shall be deemed terminated, having no further force and effect.

**4. Alteration or Changes to the Agreement**

**4.1** The Board of Supervisors and the COUNTY Purchasing Agent, and/or his or her designee, are the only authorized COUNTY representatives who may at any time, by written order, alter this Agreement on behalf of the COUNTY. If any such alteration causes an increase or decrease in the cost of, or the time required for, the performance under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

**4.2** Any claim by the CONTRACTOR for additional payment related to this Agreement shall be made in writing by the CONTRACTOR within 30 days of when the CONTRACTOR has or should have notice of any actual or claimed change in the work, which results in additional and unanticipated cost to the CONTRACTOR. If the COUNTY Purchasing Agent decides that the facts provide sufficient justification, he may authorize additional payment to the CONTRACTOR pursuant to the claim. Nothing in this section shall excuse the CONTRACTOR from proceeding with performance of the Agreement even if there has been a change.

**5. Termination**

**5.1** COUNTY may terminate this Agreement without cause upon thirty (30) days' written notice prior to each anniversary of the Subscription Start Date served upon the CONTRACTOR stating the extent and effective date of termination. COUNTY may elect not to pay fees for a renewal term, in which event this Agreement and COUNTY's access to the CONTRACTOR's application(s) shall terminate at the end of the initial term or renewal term then in effect.

**5.2** COUNTY may, upon fifteen (15) days' written notice, terminate this Agreement for CONTRACTOR's default, if CONTRACTOR refuses or fails to comply with the terms of this Agreement or fails to cure such failure after receiving reasonable notice. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by COUNTY.

**5.3** After receipt of the notice of termination, CONTRACTOR shall:

- (a) Stop all work under this Agreement on the date specified in the notice of termination; and
- (b) Transfer to COUNTY and deliver in the manner as directed by COUNTY any materials, reports or other products, required by the Agreement up to the date of termination.

5.4 After termination, COUNTY shall make payment only for CONTRACTOR's performance up to the date of termination in accordance with this Agreement.

5.5 CONTRACTOR's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty or a willful or material breach of this Agreement by CONTRACTOR; or in the event of CONTRACTOR's unwillingness or inability for any reason whatsoever to perform the terms of this Agreement. In such event, CONTRACTOR shall not be entitled to any further compensation under this Agreement.

5.6 If the Agreement is federally or State funded, CONTRACTOR cannot be debarred from the System for Award Management (SAM). CONTRACTOR must notify the COUNTY immediately of a debarment. Reference: System for Award Management (SAM) at <https://www.sam.gov> for Central Contractor Registry (CCR), Federal Agency Registration (Fedreg), Online Representations and Certifications Application, and Excluded Parties List System (EPLS)). Excluded Parties Listing System (EPLS) (<http://www.epls.gov>) (Executive Order 12549, 7 CFR Part 3017, 45 CFR Part 76, and 44 CFR Part 17). The System for Award Management (SAM) is the Official U.S. Government system that consolidated the capabilities of CCR/FedReg, ORCA, and EPLS.

5.7 The rights and remedies of COUNTY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

**6. Ownership/Use of Contract Materials and Products**

Except for CONTRACTOR's Intellectual Property, the CONTRACTOR agrees that all materials, reports or products in any form, including electronic, created by CONTRACTOR for which CONTRACTOR has been compensated by COUNTY pursuant to this Agreement shall be the sole property of the COUNTY. Subject to the limitations set forth in CONTRACTOR's Terms and Conditions, the material, reports or products may be used by the COUNTY for any purpose that the COUNTY deems to be appropriate, including, but not limit to, duplication and/or distribution within the COUNTY or to third parties. CONTRACTOR agrees not to release or circulate in whole or part such materials, reports, or products without prior written authorization of the COUNTY.

6.1 Except as provided herein, unless it receives COUNTY's prior written consent, CONTRACTOR shall not: (i) access, process, or otherwise use COUNTY data; or (ii) intentionally grant any third-party access to COUNTY data, including without limitation, CONTRACTOR's other customers, except CONTRACTOR's subcontractors that are subject to a reasonable nondisclosure agreement. As between CONTRACTOR and COUNTY, all COUNTY data shall be owned by COUNTY. Notwithstanding the foregoing, CONTRACTOR may use and disclose COUNTY data to fulfill its obligations under this Agreement or as required by applicable law or by proper legal or governmental authority. To the extent that it is not prohibited from doing so by law or

the terms of such legal or governmental demand, CONTRACTOR shall give COUNTY prompt notice of any such legal or governmental demand and reasonably cooperate with COUNTY in any effort to seek a protective order or otherwise to contest such required disclosure, at COUNTY's expense.

**6.2 Anonymized Data.** Notwithstanding any provision herein, CONTRACTOR may use, reproduce, license, or otherwise exploit Anonymized Data, provided that Anonymized Data does not contain and is not PHI (as defined in the Health Insurance Portability and Accountability Act of 1996 and its related regulations, as each may be amended). "Anonymized Data" means COUNTY data with PHI and the names and addresses of COUNTY and its Users removed.

**7. Conduct of Contractor**

**7.1** The CONTRACTOR covenants that it presently has no interest in, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance under this Agreement. The CONTRACTOR further covenants that no person or subcontractor having any such interest shall be employed or retained by CONTRACTOR under this Agreement. The CONTRACTOR agrees to inform the COUNTY of all the CONTRACTOR's interests, if any, which are or may be perceived as incompatible with the COUNTY's interests.

**7.2** The CONTRACTOR shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement.

**7.3** The CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

**8. Inspection of Service; Quality Control/Assurance**

**8.1** All performance (which includes services, workmanship, materials, supplies and equipment furnished or utilized in the performance of this Agreement) shall be subject to inspection and test by the COUNTY or other regulatory agencies at all times, with the COUNTY agreeing to provide reasonable written notice prior to its inspections or tests. The CONTRACTOR shall provide adequate cooperation to any inspector or other COUNTY representative to permit him/her to determine the CONTRACTOR's conformity with the terms of this Agreement. If any services performed or products provided by CONTRACTOR are not in conformance with the terms of this Agreement, the COUNTY shall have the right to require the CONTRACTOR to perform the services or provide the products in conformance with the terms of the Agreement at no additional cost to the COUNTY. When the services to be performed or the products to be provided are of such nature that the difference cannot be corrected; the COUNTY shall have the right to: (1) require the CONTRACTOR immediately to take all necessary



steps to ensure future performance in conformity with the terms of the Agreement; and/or (2) reduce the Agreement price to reflect the reduced value of the services performed or products provided. The COUNTY may also terminate this Agreement for default and charge to CONTRACTOR any costs incurred by the COUNTY because of the CONTRACTOR's failure to perform.

**8.2** CONTRACTOR shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Agreement; and shall permit a COUNTY representative or other regulatory official to monitor, assess, or evaluate CONTRACTOR's performance under this Agreement at any time, upon reasonable notice to the CONTRACTOR.

**9. Independent Contractor/Employment Eligibility**

**9.1** The CONTRACTOR is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CONTRACTOR (including its employees, agents, and subcontractors) shall in no event be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the parties; and CONTRACTOR shall hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that CONTRACTOR in the performance of this Agreement is subject to the control or direction of COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

**9.2** CONTRACTOR warrants that it shall make its best effort to fully comply with all federal and state statutes and regulations regarding the employment of aliens and others and to ensure that employees performing work under this Agreement meet the citizenship or alien status requirement set forth in federal statutes and regulations. CONTRACTOR shall obtain from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by federal or state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all covered employees, for the period prescribed by the law.

**9.3** Ineligible Person shall be any individual or entity who: Is currently excluded, suspended, debarred or otherwise ineligible to participate in the federal health care programs; or has been convicted of a criminal offense related to the provision of health care items or services and has not been reinstated in the federal health care programs after a period of exclusion, suspension, debarment, or ineligibility.

9.4 CONTRACTOR shall screen prospective covered individuals prior to hire or engagement. CONTRACTOR shall not hire or engage any Ineligible Person to provide services directly relative to this Agreement. CONTRACTOR shall screen all current Covered Individuals within sixty (60) days of execution of this Agreement to ensure that they have not become Ineligible Persons unless CONTRACTOR has performed such screening on same Covered Individuals under a separate agreement with COUNTY within the past six (6) months. Covered Individuals shall be required to disclose to CONTRACTOR immediately any debarment, exclusion or other event that makes the Covered Individual an Ineligible Person. CONTRACTOR shall notify COUNTY within five (5) business days after it becomes aware if a Covered Individual providing services directly relative to this Agreement becomes debarred, excluded or otherwise becomes an Ineligible Person.

9.5 CONTRACTOR acknowledges that Ineligible Persons are precluded from providing federal and state funded health care services by contract with COUNTY in the event that they are currently sanctioned or excluded by a federal or state law enforcement regulatory or licensing agency. If CONTRACTOR becomes aware that a Covered Individual has become an Ineligible Person, CONTRACTOR shall remove such individual from responsibility for, or involvement with, COUNTY business operations related to this Agreement.

9.6 CONTRACTOR shall notify COUNTY within five (5) business days if a Covered Individual or entity is currently excluded, suspended or debarred, or is identified as such after being sanction screened. Such individual or entity shall be promptly removed from participating in any activity associated with this Agreement.

#### 10. Subcontract for Work or Services

No contract shall be made by the CONTRACTOR with any other party for furnishing any of the work or services under this Agreement without the prior written approval of the COUNTY; but this provision shall not require the approval of contracts of employment between the CONTRACTOR and personnel assigned under this Agreement, or for parties named in the proposal and agreed to under this Agreement.

#### 11. Disputes

11.1 The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. Any dispute relating to this Agreement, which is not resolved by the parties, shall be decided by the COUNTY's Purchasing Department's Compliance Contract Officer who shall furnish the decision in writing. The decision of the COUNTY's Compliance Contract Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous to imply bad faith. The CONTRACTOR shall proceed diligently with the performance of this Agreement pending the resolution of a dispute, and the COUNTY shall continue to pay for the services provided under the Agreement prior to its termination.

**11.2** Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The parties shall share the cost of the mediations.

**12. Licensing and Permits**

CONTRACTOR shall comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9 of Division 3 of the Business and Professions Code. All licensing requirements shall be met at the time proposals are submitted to the COUNTY. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Riverside and all other governmental agencies with jurisdiction and shall maintain these throughout the term of this Agreement.

**13. Use By Other Political Entities – Intentionally Deleted**

**14. Non-Discrimination**

CONTRACTOR shall not discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et Seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) and all other applicable laws or regulations.

**15. Records and Documents**

CONTRACTOR shall make available, upon written request by any duly authorized Federal, State, or COUNTY agency, a copy of this Agreement and such books, documents and records as are necessary to certify CONTRACTOR's performance under the Agreement. All such books, documents and records shall be maintained by CONTRACTOR for at least five years following termination of this Agreement and be available for audit by the COUNTY. CONTRACTOR shall provide to the COUNTY reports and information related to this Agreement as reasonably requested by COUNTY.

**16. Confidentiality**

**16.1** The CONTRACTOR shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing

actions; COUNTY information or data which is not subject to public disclosure; COUNTY operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement.

**16.2** The CONTRACTOR shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for general statistical information not identifying any person. The CONTRACTOR shall not use such information for any purpose other than carrying out the CONTRACTOR's obligations under this Agreement. The CONTRACTOR shall promptly transmit to the COUNTY all third-party requests for disclosure of such information. The CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in writing by the COUNTY, any such information to anyone other than the COUNTY. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particulars assigned to the individual, such as finger or voice print or a photograph.

**17. Administration/Contract Liaison**

The COUNTY Purchasing Agent, or designee, shall administer this Agreement on behalf of the COUNTY. The Purchasing Department is to serve as the liaison with CONTRACTOR in connection with this Agreement.

**18. Notices**

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two days after their deposit in the United States mail, postage prepaid:

**COUNTY OF RIVERSIDE**

Department of Emergency Management  
450 E. Alessandro Blvd.  
Riverside, CA 92508  
Attn: Purchasing

**CONTRACTOR**

Pediatric Emergency Standards, Inc.  
11870 State Rd.84 Suite C5  
Davie, FL 33325

**19. Force Majeure**

If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply.

**20. EDD Reporting Requirements**

In order to comply with child support enforcement requirements of the State of California, the COUNTY may be required to submit a Report of Independent Contractor(s) form **DE 542** to the Employment Development Department. The CONTRACTOR agrees to furnish the required data and certifications to the COUNTY within



10 days of notification of award of Agreement when required by the EDD. This data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders. Failure of the CONTRACTOR to timely submit the data and/or certificates required may result in the contract being awarded to another contractor. In the event a contract has been issued, failure of the CONTRACTOR to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignments Orders and Notices of Assignment shall constitute a material breach of Agreement. If CONTRACTOR has any questions concerning this reporting requirement, please call (916) 657-0529. CONTRACTOR should also contact its local Employment Tax Customer Service Office listed in the telephone directory in the State Government section under "Employment Development Department" or access their Internet site at [www.edd.ca.gov](http://www.edd.ca.gov).

**21. Hold Harmless/Indemnification**

**21.1** Subject to CONTRACTOR's Limitation of Liability, CONTRACTOR shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability, action, claim or damage whatsoever, based or asserted upon any services of CONTRACTOR, its officers, employees, subcontractors, agents or representatives arising out of CONTRACTOR's performance under this Agreement, including but not limited to property damage, bodily injury, or death. CONTRACTOR shall defend the Indemnitees at its expense including all reasonable costs and fees (including, but not limited, to reasonable attorney fees, cost of investigation, defense and settlements or awards) in any indemnified claim or action.

**21.2** With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR indemnification to Indemnitees as set forth herein.

**21.3** CONTRACTOR'S obligation hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

**21.4** The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR'S obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

**22. Insurance**

**22.1** Without limiting or diminishing the CONTRACTOR'S obligation to indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds.

**A. Workers' Compensation:**

If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside.

**B. Commercial General Liability:**

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Policy shall name the COUNTY as Additional Insured. Policy's limit of liability shall not be less than \$2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

**C. Vehicle Liability:**

If vehicles or mobile equipment is used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned, or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the COUNTY as Additional Insureds.

**D. Cyber Liability Insurance:**

1) Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to person or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees. Contractor shall procure and maintain for the duration of the contract insurance claims arising out of their services and including, but not limited to loss,



damage, theft or other misuse of data, infringement of intellectual property, invasion of privacy and breach of data.

2) Cyber Liability Insurance, with limits not less than \$1,000,000 per occurrence or claim, \$1,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

3) If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County. Policy shall name the COUNTY as Additional Insureds.

**F. General Insurance Provisions - All lines:**

1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

2) The CONTRACTOR must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the COUNTY, and at the election of the County's Risk Manager, CONTRACTOR'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

3) CONTRACTOR shall cause CONTRACTOR'S insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to

any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier shall sign the original endorsements for each policy and the Certificate of Insurance.

4) In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the COUNTY receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate(s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.

5) It is understood and agreed to by the parties hereto that the CONTRACTOR'S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

6) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

7) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

8) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.

9) CONTRACTOR agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

**23. General**

**23.1** CONTRACTOR shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of COUNTY. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

**23.2** Any waiver by COUNTY of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of COUNTY to require exact, full, and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing COUNTY from enforcement of the terms of this Agreement.

**23.3** In the event the CONTRACTOR receives payment under this Agreement, which is later disallowed by COUNTY for nonconformance with the terms of the Agreement, the CONTRACTOR shall promptly refund the disallowed amount to the COUNTY on request; or at its option the COUNTY may offset the amount disallowed from any payment due to the CONTRACTOR.

**23.4** CONTRACTOR shall not provide partial delivery or shipment of services or products unless specifically stated in the Agreement.

**23.5** CONTRACTOR shall not provide any services or products subject to any chattel mortgage or under a conditional sales contract or other agreement by which an interest is retained by a third party. The CONTRACTOR warrants that it has good title to all materials or products used by CONTRACTOR or provided to COUNTY pursuant to this Agreement, free from all liens, claims, or encumbrances.

**23.6** Nothing in this Agreement shall prohibit the COUNTY from acquiring the same type or equivalent equipment, products, materials or services from other sources, when deemed by the COUNTY to be in its best interest. The COUNTY reserves the right to purchase more or less than the quantities specified in this Agreement.

**23.7** The COUNTY agrees to cooperate with the CONTRACTOR in the CONTRACTOR's performance under this Agreement, including, if stated in the Agreement, providing the CONTRACTOR with reasonable facilities and timely access to COUNTY data, information, and personnel.

**23.8** CONTRACTOR shall comply with all applicable Federal, State and local laws and regulations. CONTRACTOR will comply with all applicable COUNTY policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the CONTRACTOR shall comply with the more restrictive law or regulation.

**23.9** CONTRACTOR shall comply with all air pollution control, water pollution, safety and health ordinances, statutes, or regulations, which apply to performance under this Agreement.

**23.10** CONTRACTOR shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

**23.11** This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**23.12 ELECTRONIC SIGNATURES:** This Agreement, and/or any subsequent amendments to this Agreement, may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument. Each party of the Agreement agrees to the use of electronic signatures, such as a digital signature that meet the requirements of the California Uniform Electronic Transactions Act ((“CUETA”) Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this Agreement. The parties further agree that the electronic signature(s) included herein are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to the CUETA as amended from time to time. Digital signature means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by the parties. For purposes of this section, a digital signature is a type of “electronic signature” as defined in subdivision (i) of Section 1633.2 of the Civil Code.

**23.13 CORPORATE SIGNERS:** Pursuant to California Corporations code section 313, signature of Chairperson of the Board, Chief Executive Officer, President, or Vice President, and the Secretary, Assistant Secretary, the Chief Financial Officer, or Assistant Treasurer is required. If providing only one signature, a resolution or other proof of delegated authority that shows signer can legally bind the corporation is required.

**23.14** This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement.

COUNTY OF RIVERSIDE, a political subdivision of the State of California

PEDIATRIC EMERGENCY STANDARDS, INC. a Florida Profit Corporation

By: Chuck Washington  
Chuck Washington, Chair  
Board of Supervisors  
Dated: 6/04/2024

*\*Signature of First Corporate Officer*  
By: Allison Antevy  
Name: Allison Antevy  
Title: CEO & President  
Dated: 5/23/24

ATTEST:  
Kimberly Rector  
Clerk of the Board  
By: Naomy Li  
Deputy

*\*Signature of Second Corporate Officer*  
By: Peter Antevy  
Name: Peter Antevy, MD  
Title: Founder iCMO  
Dated: 5/23/24

APPROVED AS TO FORM:  
Minh C. Tran  
County Counsel

By: Melissa R. Cushman  
for Melissa R. Cushman  
Deputy County Counsel



## **EXHIBIT A SCOPE OF SERVICES**

### **A. Introduction**

Pediatric Emergency Standards, Inc. (CONTRACTOR) shall provide the COUNTY with access and services available through the Handtevy System. The Handtevy System is the leading integrated mobile software solution designed to give clinical teams rapid access to lifesaving dosing information while documenting ever action in real time. Caring for a critically ill or injured child requires rapid, coordinated, and precise treatment, and time is of the essence. Handtevy Mobile, created by a team of nationally recognized pediatric experts, provides a 360-degree solution to the emergent pediatric patient.

With Handtevy Mobile, the COUNTY clinicians can rapidly identify and filter medication dosages and equipment sizes, build on-scene checklists and reference protocol sets for both children and adults all from a single screen. Integration with Electronic Patient Care Reporting (ePCR) Software, including Image Trend Elite Field, allows COUNTY to perform real-time verification of high acuity medications and ensure accurate event documentation. The CONTRACTOR's Handtevy Mobile is currently being used in Emergency Management Services (EMS) agencies and hospitals in all 50 states, improving patient safety, reducing medication errors and building clinician confidence nationwide.

### **B. Data Storage**

The COUNTY data is owned by the COUNTY and stored by CONTRACTOR through the cloud-based Handtevy Administrator Portal. Version control history can be accessed by the COUNTY and is stored separately for each installation of Handtevy Mobile. Several redundancies are in place to prevent blackouts. The COUNTY can monitor blackout times from the public status page found here. The CONTRACTOR's systems are monitored 24/7 and the CONTRACTOR technical team is alerted as soon as service offerings are affected.

### **C. Customization & Implementation**

Clinical customization is the process to determine what medications, equipment, and drip information shall be included in the Handtevy Mobile application. Upon contract execution, each COUNTY and agency department's designated Handtevy administrators will be assigned a CONTRACTOR's Clinical Specialist.

The CONTRACTOR's specialist will work with each COUNTY and agency department's designated clinical representatives to create a unique Handtevy Mobile installation, one for each COUNTY department/agency based of local protocol and pharmacology carried. The COUNTY clinical representative(s) of each department/agency will then be contacted by a CONTRACTOR Clinical Specialist to review requested modifications and ultimately approve through mutual agreement by both parties, the respective Handtevy Mobile applications. CONTRACTOR will perform the customization process remotely. A kick-off call between each COUNTY department/agency designated representative(s) and the designated CONTRACTOR team will be scheduled to achieve the following goals:

1. Introduce the CONTRACTOR'S implementation team that will be performing the implementation.
2. Identify the COUNTY's project team and their responsibilities.
3. Define criteria for a successful implementation and the metrics in which these criteria will be measured.



4. Discuss timeline and critical dates.
5. Discuss potential risks and issues based upon the COUNTY's and CONTRACTOR experience.

Pending delays by COUNTY, the CONTRACTOR offers a **general estimate of 1 to 3 months** from clinical customization to the time the COUNTY may expect to "go live" with Handtevy Mobile. The first year only is a thirteen (13) month period to accommodate for the customization process.

The COUNTY's testing of the Handtevy Mobile application is active throughout the customization process. COUNTY designated representatives from each department/agency will be given access to the application to consistently review and test until final approval is achieved by both the COUNTY and CONTRACTOR.

### **Implementation**

The success of any software or technology implementation hinges on a quality education program tailored to a specific process or processes. The CONTRACTOR implementation team offers training options to support a successful implementation. During this phase, CONTRACTOR and a COUNTY designated representative from each department/agency will be invited to:

1. CONTRACTOR and COUNTY will work together to schedule a phone call between designated Education contact within REMSA to discuss training strategy and scheduling options for a single onsite Handtevy Instructor Course.
2. CONTRACTOR and COUNTY will work together to determine deployment strategy for onboarding of Handtevy Mobile and other Handtevy resources if applicable.
3. CONTRACTOR and COUNTY Discuss implementation tools offered for deployment of the Handtevy System to include no cost online resources and/or through the Handtevy Instructor (train-the-trainer) Course options.

CONTRACTOR training courses are live, on-site or virtual, super-user trainings. The Instructor Course will serve to establish a base of COUNTY individuals who deeply understand the functionality of the software and can help train and answer questions going forward. The functionality and methodology in putting this technology into practice will be explained, as well as having each individual input data into the system using pre-established pediatric mock scenarios. The course goes beyond the technology and serves as a complete education to treat the emergency pediatric patient, offering Commission on Accreditation for Prehospital Continuing Education (CAPCE) accredited and Commission on Accreditation of Medical Transport Systems (CAMTS) approved continuing education credits.

### **D. COUNTY Responsibilities and Assumptions**

The following COUNTY responsibilities and assumptions are necessary for the successful completion of the implementation. In the event an item below does not occur in the manner or time frame defined, the CONTRACTOR may request to meet with the COUNTY designees and mutually agree upon an adjustment to the schedule, work activities and fees. The COUNTY is responsible to:

1. Ensure the committed participation of all COUNTY appropriate technical and user personnel throughout the project, including but not limited to, periodic status reviews.
2. Assist to resolve any issues including those impacting the scope and timeline. Issues that may impact the progress and the schedule will be documented. COUNTY shall not be held liable for delays caused by the COUNTY.

**E. CONFIDENTIAL**

Once the Handtevy Mobile application is live and being utilized by the COUNTY, the implementation and training process shall be deemed completed, except for CONTRACTOR's routine follow-up process to ensure COUNTY's satisfaction. Coordinating training dates and testing the application are a few of the items that can either speed up or delay the implementation timeline.

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**EXHIBIT B  
PAYMENT PROVISIONS**

Reference Quote Number: Q-05166

Product Code	Description	Quantity	List Price	Discount, %	Unit Price	Total
HMPS2023	Customization and Setup for Handtevy Mobile	1.000	\$16,713.75	0.00	\$16,713.75	\$16,713.75
HMPA2023	Annual access to Handtevy Mobile. Access to Medication Management Software, Unlimited Updates Included, Clinical and Technical support	1.000	\$46,151.82	0.00	\$46,151.82	\$46,151.82
HPB004	Length-based measuring tape	75.000	\$50.00	20.00	\$40.00	\$3,000.00
HPC400	2 Year Handtevy Instructor Certification 8 CEUs [CAPCE Certified]	20.000	\$299.00	0.00	\$299.00	\$5,980.00
HPC401	Handtevy Prehospital Pediatric Instructor Course on location with Handtevy Instructor	1.000	\$2,495.00	0.00	\$2,495.00	\$2,495.00
HPB004	Length-based measuring tape	200.000	\$50.00	10.00	\$45.00	\$9,000.00

**Subtotal** \$85,090.57  
**Discount** \$1,750.00  
**Total Price** \$83,340.57  
**Tax** \$0.00  
**Shipping and Handling** \$213.56  
**Total** \$83,554.13

Note: 7.75% Use Tax applied to measuring tapes (at \$930.00) and shipping and handling (at \$20.00) costs

Description	FY23/24	FY24/25	FY25/26	FY26/27	FY27/28	Total
<b>One-time Costs:</b>						
Customization and Setup for Handtevy Mobile, Medication Software Access/Support, Length-Based Measuring Tape, Instructor Course and Certification	\$84,504.13					\$84,504.13
<b>Ongoing Costs:</b>						
Medication Management Software Access/Support		\$48,459.41	\$50,882.38	\$53,426.50	\$56,097.83	\$208,866.12
<b>Total Costs</b>	<b>\$84,504.13</b>	<b>\$48,459.41</b>	<b>\$50,882.38</b>	<b>\$53,426.50</b>	<b>\$56,097.83</b>	<b>\$293,370.25</b>

## EXHIBIT C SOFTWARE LEVEL AGREEMENT

### DEFINITIONS.

- a. "Agreement." The Quote, these Terms and Conditions, and the Purchase Order or the signed Quote and these Terms and Conditions shall constitute an agreement of the parties and be collectively referred to as the "Agreement."
- b. "Customer" shall be identified as such on the Quote.
- c. "Customer Data" means data entered by Customer relating to its patients that is entered into or transmitted through the PES Apps.
- d. "Customer Protocols" means the medical practices, protocols, and guidelines adopted or used by Customer for patient care, including all drug concentrations, drug dosages, equipment sizes, and other practices adopted by Customer, formally or informally, from time to time.
- e. "Customized" or "Customization" means changes to the PES Apps created by PES at Customer's request and for Customer's benefit in order for Customer to operate the PES Apps in a manner consistent with Customer's Protocols.
- f. "Customized Offerings" means the PES Offerings that have been approved by Customer after Customization.
- g. "Effective Date" means the date Customer delivers a signed Purchase Order to PES.
- h. "Initial Term" means the thirteen (13) month period commencing on the Effective Date.
- i. "PES" means Pediatric Emergency Standards, Inc.
- j. "PES Apps" means the software application(s) licensed by Customer pursuant to this Agreement as referenced on the Quote.
- k. "PES Materials" means any durable goods provided by PES to Customer as identified in the Quote.
- l. "PES Offerings." The PES Apps, the PES Materials, and the PES Services are sometimes collectively referred to as the "PES Offerings."
- m. "PES Services" means professional services provided by PES to Customer as identified in the Quote, which may include Customization, education and training courses, and other support services.
- n. "Purchase Order" means a document signed by Customer evidencing acceptance of the Quote.
- o. "Quote" means an offer by PES to provide certain PES Offerings at a price and on terms set forth therein and in these Terms and Conditions. These Terms and Conditions are incorporated into the Quote.
- p. "Renewal Term" means a twelve (12) month period commencing on an anniversary of the Subscription Start Date in the event that Customer elects to renew this Agreement pursuant to Section 7(a) below.
- q. "SaaS" means software-as-a-service.
- r. "Subscription Start Date" means the date that is (i) thirty (30) days after the Effective Date, or (ii) such earlier date as agreed to in writing by PES and Customer.
- s. The "Term" shall begin on the Effective Date and continue until this Agreement is terminated or not renewed by either party in accordance with Section 7 below.
- t. "User" means any individual that is an employee of or is or works for a contractor of Customer and that uses PES Offerings, whether authorized by Customer to do so or not.

### 2. LICENSE.

- a. License Grant. Subject to the terms of this Agreement, beginning on the Effective Date and during the Term, PES grants Customer a personal, non-exclusive license to access and use the PES Offerings. With respect to PES Apps, such license shall be in object code form only.
- b. Customization. Clinical guidelines and related clinical content contained in the PES Offerings must be approved by Customer pursuant to the Customization process prior to use in connection with patient care. Between the Effective Date and the Subscription Start Date is a thirty (30) day grace period during which Customer shall complete the Customization process. Both PES and Customer will make reasonable efforts to ensure that Customer is "live" on the PES Apps as quickly as possible, however, in no event will the Subscription Start Date be modified for implementation delays due to Customer. Customer shall have an ongoing obligation to monitor and update the Customized Offerings to ensure consistency with Customer's Protocols, as Customer's Protocols may evolve over time. Customer shall submit a written request to PES for prompt revision and updating of the Customized Offerings when Customer or its medical staff, employees and/or contractors make modifications to Customer's Protocols.
- c. Improvements. Customer agrees that any improvements or modifications to the PES Offerings shall belong to PES. Customer hereby grants, transfers and assigns (and agrees to grant, transfer and assign) to PES any and all of Customer's right, title and interest in and to such improvements or modifications. PES shall not be restricted in any manner in its use of any intellectual property created by it hereunder for Customer. The foregoing grant, transfer and assignment (and agreement to grant, transfer and assign) also applies to any enhancement or improvement recommended orally or in writing by Customer to PES.
- d. Exclusions. The foregoing license does not include the right to, and Customer has no right to: (i) decompile, reverse engineer, disassemble, print, copy or display the PES Offerings in whole or in part or otherwise reduce the PES Apps to a human perceivable form in whole or in part; (ii) publish, release, rent, lease, sublicense, loan, sell, distribute or transfer all or any portion of the PES Offerings to another person or entity; (iii) use or reproduce the PES Offerings for the use or benefit of anyone other than in connection with Customer's business enterprise; (iv) alter, modify or create derivative works of the PES Offerings in whole or in part; (v) use or permit the use of the PES Offerings for commercial time-sharing arrangements or providing service bureau, data processing, rental, or other services to any third party, or (vi) use the PES Offerings or any part or aspect thereof for any unlawful purpose or to mislead or harass anyone. Use of or access to the PES Offerings in violation of the terms hereof is strictly prohibited. The rights granted Customer hereunder do not constitute a sale of any PES Offerings. PES retains all right, title, and interest in and to the PES Offerings, including without limitation all software used to provide the PES Apps (and access via the SaaS), all graphics, user interfaces, logos and trademarks reproduced through the SaaS, and all goodwill associated with any of the foregoing, except to the limited extent of Customer's license during the Term as set forth herein. Customer's permission to access or use the PES Offerings may be limited or suspended immediately if, in PES's discretion, this Section or any other provision of this Agreement has been violated by Customer or any of its Users. Customer agrees that a violation of this Section will cause PES irreparable and immediate harm, and that PES is entitled to injunctive relief to prevent such violation. Customer recognizes that the PES Offerings are protected by copyright and other laws.

### 3. FEES.

- a. Fees. Throughout the Term, Customer shall pay PES the fees and other amounts (collectively, "Fees") for the PES Offerings as set forth in the Quote. Certain amounts set forth in the Quote, such as applicable taxes, duties, and shipping and handling fees for PES Materials, are estimates and may be subject to final pricing at the time of delivery. If applicable to Customer's business, Customer may provide PES with a tax exemption certificate.



- b. **Payment.** In the case of PES Apps, Fees shall be due in full on the Subscription Start Date and each anniversary thereof. In the case of courses, payment must be made IN FULL at least twenty-four (24) hours prior to the course start time. In all other cases, Fees are due within thirty (30) days of invoice.
- c. **Suspension of Services.** PES may suspend Customer's access to and use of the PES Offerings if Customer fails to timely remit payment or is otherwise in material default hereunder. Any notices of default/termination and suspension may be combined.
- d. **Discounts.** Items or services listed at no charge on a Quote are included as part of a package discount or a subscription offering. Customer is responsible for appropriately allocating the discount extended on package pricing when fulfilling any reporting obligations.
- e. **Fee Increases for PES Apps.** Fees for PES Apps may increase by up to five percent (5%) each year, in the sole discretion of PES. Customer will be notified of any Fee increase at least thirty (30) days prior to the end of the Initial Term or Renewal Term, as applicable.
- f. **Fee Increases for PES Materials or PES Services.** PES may institute Fee increases for PES Materials and/or PES Services without notice to its customers. Any such Fee increases would not be retroactively applied.
- g. **Taxes and Fees.** Fees payable to PES are exclusive of all foreign, federal, state, and local taxes, including, without limitation, applicable sales, use, duty, customs, withholding, property, value-added, or similar sales-like taxes, tax-like charges, fees and liabilities, and credit card processing fees (but not including taxes based on PES's income) ("**Taxes and Fees**"), all of which shall be the responsibility of Customer. To the extent permitted by applicable law, Customer is responsible for and will remit (or will reimburse PES upon PES's request) such Taxes and Fees as may be paid by PES on Customer's behalf.
- h. **Appropriation of Funds.** If Customer is a city, county or other government entity, the parties agree that Customer may terminate the PES Apps and PES Services at the end of the Customer's fiscal term for a failure by Customer's governing body to appropriate sufficient funds to enable Customer to acquire the PES Apps and/or PES Services for the next fiscal year. Notwithstanding the foregoing, this provision shall not excuse Customer from past payment obligations or other Fees earned and unpaid as of the end of such Customer's fiscal term. Moreover, Customer agrees to provide PES with reasonable documentation evidencing such non-appropriation of funds.
- i. **Third Party Payer.** If a third party pays some or all Fees on behalf of Customer ("**Third Party Payer**"), the Third-Party Payer must submit a Purchase Order directly. Customer shall immediately pay (and shall remain jointly and severally liable) for payment if the Third-party Payer does not timely pay the Fees.
- j. **Late Fees.** In the event that any Fees are not paid within thirty (30) days of when due, such overdue amounts may, in the sole discretion of PES and to the extent permitted by applicable law, accrue interest until paid in full at a rate equal to the lesser of (i) one and one-half (1.5%) percent per month, or (ii) the maximum legal rate. Customer's payment will not waive or extend any obligation of Customer to make ongoing payments, as and when due.
- k. **Audit Rights.** PES may reasonably audit Customer's use of the PES Offerings and charge Customer a higher Fee if Customer's usage includes facilities, Users, patient populations, or services beyond the scope determined in development of the Quote.
- l. **Supplemental Quotes and Purchase Orders.** PES and Customer may execute and exchange additional or supplemental Quotes and/or Purchase Orders that will be subject to these Terms and Conditions and become part of this Agreement.

#### 4. DELIVERY.

- a. **PES Apps.** PES shall provide Customer access to PES Apps through a reasonable system of electronic downloads. PES shall grant Customer access promptly following completion of the Customization process.
- b. **PES Materials.** Delivery dates for PES Materials are not guaranteed. In the absence of shipping instructions from Customer, PES will obtain shipping rates on the Customer's behalf and for Customer's account. Delivery shall be FOB PES, point of shipment, and title and risk of loss shall pass to the Customer once delivered to Customer's point of shipment. PES will not be liable for any loss or damage of any kind due to delays in delivery or non-delivery resulting from any cause including, but not limited to, acts of God, labor disputes, governmental authority or edict, war, civil unrest, terrorist acts, delays in manufacture, failure of Customer to obtain any required license or permit, or the inability of PES to obtain goods from its usual sources. Any such delay shall not be considered a breach of any obligation by PES, and the delivery dates shall be extended for the length of such delay.

#### 5. SERVICE LEVEL AGREEMENT.

- a. **Hosting.** PES shall be responsible for hosting and managing PES Apps.
- b. **Service Level Agreement.** For each calendar month during the Term, PES shall use commercially reasonable efforts to ensure that the PES Apps accessed by Customer via SaaS will maintain a level of uptime equal to or better than ninety-nine percent (99%) (the "**Service Level Agreement**" or "**SLA**"). "**Uptime**" will be calculated using the following formula:  $Uptime = (T - TNF) \times 100 / T$  where "T" is the total number of hours that the PES App(s) is typically used per month (determined by multiplying the number of hours per day that the PES App(s) is typically used by the number of days per week that the PES App(s) is typically used, and multiplying the result by 4-5 weeks in a month), and "TNF" is the number of hours the PES App(s) or any component of the PES App(s) licensed by Customer under the applicable Purchase Order is not functional or otherwise unavailable

during the month for any reason other than Scheduled Downtime (as defined below) or as a result of the Permitted Exclusions (as defined below) (the hours calculated will only include those hours that the such PES Apps would typically be in use). If any material portion of the total functionality of the PES App(s) is unavailable for operational use, the PES App(s) will be considered down from the time that Customer notifies PES that a PES App(s) is non-functional and the time that such PES App(s) is serviced and made available for use. A minimum of ninety-nine percent (99%) performance is based on the network hardware being operational.

A PES App will be not considered down if the reason for the unavailability is a result of: (i) Scheduled Downtime or (ii) a Permitted Exclusion.

If the SLA is not met in any calendar month (other than as a result of Scheduled Downtime or a Permitted Exclusion), PES shall provide Customer, as its sole and exclusive remedy, a credit equal to two percent (2%) of the prorated monthly Fee for the month that the PES App(s) was unavailable (the "**Prorated Monthly Fee**"), plus an additional one percent (1%) of the Prorated Monthly Fee for each one percent (1%) that applicable Uptime is less than 99%, up to an aggregate maximum credit of six percent (6%) of the Prorated Monthly Fee. PES shall calculate Uptime and any service level downtime using its system logs and other records.

- c. **Scheduled Downtime.** If PES determines that it must intentionally interrupt the PES Apps or that there is a potential for the PES Apps to be interrupted to conduct system maintenance (collectively, "**Scheduled Downtime**"), PES will use good-faith efforts to notify Customer of such Scheduled Downtime at least

forty-eight (48) hours in advance, and will use commercially reasonable efforts to ensure that Scheduled Downtime occurs during the hours of 12 00 a.m. to 6.00 a.m. Central Time.

- d. Permitted Exclusions. Notwithstanding any other provision of this Agreement to the contrary, performance issues resulting from any of the following shall be considered a "Permitted Exclusion" for purposes of the SLA: (i) any force majeure or other event caused by factors outside of PES's reasonable control; (ii) any actions or inactions of Customer or any third parties; (iii) any third party or Customer-provided network, hardware, device or equipment failure; or (iv) general Internet operations problems. PES shall only be responsible for hardware and software upon which its PES Apps are hosted and its internet service provider up to the point its internet service provider connects with the public internet. Customer-provided network hardware support (i.e. file servers, workstations, hubs, routers, etc.) is the responsibility of Customer.

- e. Customer Must Request Service Credit. To receive a credit pursuant to Section 5(b), Customer must notify PES by email or otherwise in writing of its request, with receipt confirmation, within thirty (30) days of service interruption.

6. **CUSTOMER DATA / PRIVACY.**

- a. Ownership and Use of Data. Except as provided below, unless it receives Customer's prior written consent, PES shall not: (i) access, process, or otherwise use Customer Data; or (ii) intentionally grant any third-party access to Customer Data, including without limitation, PES's other customers, except PES subcontractors that are subject to a reasonable nondisclosure agreement. As between PES and Customer, all Customer Data shall be owned by Customer. Notwithstanding the foregoing, PES may use and disclose Customer Data to fulfill its obligations under this Agreement or as required by applicable law or by proper legal or governmental authority. To the extent that it is not prohibited from doing so by law or the terms of such legal or governmental demand, PES shall give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer's expense.

- b. Anonymized Data. Notwithstanding any provision herein, PES may use, reproduce, license, or otherwise exploit Anonymized Data, provided that Anonymized Data does not contain and is not PHI (as defined in the Health Insurance Portability and Accountability Act of 1996 and its related regulations, as each may be amended). "Anonymized Data" means Customer Data with PHI and the names and addresses of Customer and its Users removed.

7. **TERM; TERMINATION.**

- a. Renewal Upon Payment of Fees. Thirty (30) days prior to each anniversary of the Subscription Start Date, PES shall invoice Customer for Fees for the next twelve (12) month period. Payment of such Fees by Customer shall constitute a renewal of this Agreement for an additional twelve (12) month Renewal Term, during which time this Agreement may only be terminated either (i) by mutual agreement of the parties, or (ii) for Cause pursuant to Section 7(c) below.

- b. Non-Renewal. Customer may elect not to pay Fees for a Renewal Term, in which event this Agreement and Customer's access to the PES Apps shall terminate at the end of the Initial Term or Renewal Term then in effect. PES may elect not to renew this Agreement for a Renewal Term by providing Customer with at least thirty (30) days advance written notice, in which event this Agreement and Customer's access to the PES Apps shall terminate at the end of the Initial Term or Renewal Term then in effect.

- c. Termination for Cause. Either party may terminate this Agreement, and Customer's use of the PES Offerings, for "Cause" in the event that:

- i. Either party breaches a material provision of this Agreement (which shall include non-payment of Fees) and such breach is not cured within 30 days after written notice is provided to the breaching party. Customer's access to the PES Offerings may be suspended during the 30-day cure period if the breach would cause potential damage to PES or otherwise renders Customer's continued use thereof unsafe;
- ii. Either party files a petition in bankruptcy, whether voluntary or involuntary, or an assignment for the benefit of creditors, in which event termination shall be effective immediately; or
- iii. Customer breaches or threatens to breach any of the provisions of: (A) Section 2(d) with respect to exclusions to Customer's license hereunder; or (B) Section 10 regarding confidentiality. Termination pursuant to this Section 7(c)(iii) shall be immediate upon written notice by PES.

- d. Purchase Order Cancellation or Change. After the Effective Date, Purchase Orders may not be cancelled, changed, suspended or deferred without the express, written consent of PES. Customer agrees to pay all Fees and costs associated with any cancellation, change, suspension or deferral of a Purchase Order including, without limitation, for PES's Customization work and PES's efforts to mitigate damages. If PES agrees to allow cancellation of a Purchase Order, then this Agreement shall terminate as of the date of such mutual agreement, otherwise, this Agreement and Customer's obligation to pay Fees shall continue for the remainder of the Term.

- e. Returns. PES Materials may be returned for a refund within thirty (30) days of the delivery date, provided, that returned PES Materials will not be accepted if they have been used or are not in good condition. Customized PES Offerings are non-refundable. If accepted, returned PES Materials are subject to a fifteen percent (15%) restocking fee. Return shipping fees are Customer's responsibility. If Customer desires to return PES Materials, Customer must first call PES Customer Service at 866.867.3192 and obtain a Return Goods Authorization Number (RGA#). Customer must then repackage PES Materials and mail them to Pediatric Emergency Standards, Inc., 11870 State Road 84, Suite C5, Davie, Florida 33325. PES Materials that are returned without prior authorization will be refused, and the carrier will charge Customer freight in both directions. If PES accepts returned items and issues a refund pursuant to this Section, then this Agreement shall terminate as of such refund date.

- f. Effect of Termination. Upon any termination of this Agreement pursuant to this Section 7, Customer's license to use and access to the PES Offerings will immediately cease and all Fees due hereunder shall be immediately due and payable; provided, however, that, in the event Customer terminates this Agreement pursuant to Section 7(c)(i) as a result of an uncured breach by PES or pursuant to Section 7(c)(ii) in the event PES files a petition in bankruptcy or makes an assignment for the benefit of creditors, then Customer shall be relieved of any further obligation to pay Fees and PES shall refund to Customer prorated Fees already paid by Customer for the remainder of the Term. The applicability of certain provisions in this Agreement shall survive termination as set forth in Section 18(e) below.

8. **SERVICE AND REPAIRS**. Updates to the PES Apps shall be made available to Customer at no additional charge. All service and/or repairs are performed wholly or in part at the discretion of PES. PES Materials damaged in delivery will be replaced at no cost to the Customer. Damage caused by wear and tear, abuse or accident is at the expense of Customer. The remedies provided herein are exclusive.

9. **DISCLAIMERS.**

- a. Disclaimer of Warranties. EXCEPT AS PROVIDED HEREIN, THE PES OFFERINGS ARE PROVIDED ON AN "AS IS" BASIS, AND PES

EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES RELATED THERETO, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AND OTHERWISE.



- b. Disclaimers regarding Technology. Customer acknowledges that accessing data online involves risks of unavailability of information and Customer assumes such risks. Customer has sole responsibility for obtaining, maintaining and securing its connections to the Internet. PES makes no representations to Customer regarding the reliability, performance or security of any network or provider. PES cannot control the flow of data to or from its network and other portions of the internet as such flow depends, in large part, on the performance of internet service providers or third parties. At times, actions or inactions of such third parties may impair or disrupt Customer's connections to the internet (or portions thereof). Accordingly, PES disclaims any and all liability resulting from or related in any way to any unavailability of a PES App, including as a result of Scheduled Downtime or a Permitted Exclusion, and Customer acknowledges that its sole remedies in any such event are as set forth in Section 5(b). For these reasons, Customer further agrees to instruct its Users and all medical personnel to have hard copies of Customer's Protocols and the PES Materials or other backup options immediately available at all times in case access to the PES Apps is interrupted or otherwise becomes unavailable.
- c. Disclaimers regarding Clinical Content.
- i. PES makes no representations or warranties with respect to the clinical content contained in the PES Offerings and in the Customized Offerings approved by Customer.
  - ii. Clinical guidelines and related clinical content contained in the PES Offerings must be approved by Customer pursuant to the Customization process prior to use in connection with patient care. Customer shall have an ongoing obligation to monitor and update the Customized Offerings to ensure consistency with Customer's Protocols, as Customer's Protocols may evolve over time. Customer shall submit a written request to PES for prompt revision and updating of the Customized Offerings when Customer or its medical staff, employees and/or contractors make modifications to Customer's Protocols.
  - iii. Customer hereby acknowledges that the Customized Offerings are not a substitute for the judgment of licensed medical professionals. The Customized Offerings are tools that may assist medical professionals in the delivery of care to patients. All medical judgments are reserved to licensed clinicians. Failure to render care consistent with recognized standards of care may result in injury to the patient.
  - iv. Customer must determine for itself whether the PES Offerings will meet its needs, and PES makes no representations or warranties in that regard.

#### 10. CONFIDENTIALITY.

- a. Confidential Information. For purposes of this Agreement, the term "Confidential Information" means: (i) any non-public information of PES or Customer including, without limitation, information regarding the PES Offerings, information relating to current and planned products and services of PES and its technology, techniques, know-how, research, engineering, designs, finances, accounts, procurement requirements, manufacturing, customer lists, business forecasts and marketing plans; (ii) PES's security controls, policies, procedures, audits, or other information concerning PES's internal security posture; (iii) patient information obtained by Customer; (iv) any other information of a party that is disclosed in writing and is conspicuously designated as "Confidential" at the time of disclosure or that is disclosed orally and is identified as "Confidential" at the time of disclosure; and (v) this Agreement, including the Quote. Notwithstanding the foregoing, Confidential Information does not include information that: (A) is in the other party's possession at the time of disclosure, (B) is independently developed without use of or reference to Confidential Information; (C) becomes known publicly, before or after disclosure, other than as a result of a party's improper action or inaction; (D) is approved for release in writing by the disclosing party; or (E) is required to be disclosed by law.
- b. Nondisclosure. The parties shall not use Confidential Information for any purpose other than to fulfill their respective obligations under this Agreement. Each party: (i) shall ensure that its employees or contractors are bound by confidentiality obligations no less restrictive than those contained herein; and (ii) shall not disclose Confidential Information to any third party without prior written consent from the disclosing party. Without limiting the generality of the foregoing, the receiving party shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. A receiving party shall promptly notify the disclosing party of any misuse or misappropriation of Confidential Information of which it becomes aware.
- c. Injunction. Customer agrees that breach of this Section would cause PES irreparable injury, for which monetary damages would not provide adequate compensation. In such instance, PES will be entitled to injunctive relief against such breach or threatened breach, without PES proving actual damages or posting a bond or other security, provided that if a judge determines that a bond is required, the parties agree that One Thousand Dollars (\$1,000) shall be a reasonable bond.
- d. Open Records Laws and other Disclosure Requests. PES acknowledges that Customer may be required to disclose certain Confidential Information if mandated by court order or, in the case of a Customer that is a governmental entity, pursuant to applicable open records laws or lawful public records requests. At such time as Customer becomes aware that it may be required to disclose Confidential Information, it agrees to (i) provide PES with prompt written notice in order to allow PES to protect its Confidential Information, object to the disclosure, and/or to seek a protective order, and (ii) cooperate with PES in such efforts. In addition to the obligations of this Section with respect to Confidential Information generally, Customer agrees to provide additional protection to PES source code information pursuant to Section 10(e) below.
- e. Source Code. THE SOURCE CODE FOR THE PES APPS SHALL BE CONSIDERED HIGHLY CONFIDENTIAL INFORMATION UNDER THIS AGREEMENT AND MAY NOT, UNDER ANY CIRCUMSTANCE, BE DISCLOSED BY CUSTOMER TO ANY THIRD PARTY EXCEPT PURSUANT TO A VALID COURT ORDER.
- f. Return of Confidential Information. Immediately upon termination of this Agreement or upon request, each party agrees to promptly return all Confidential Information and copies thereof belonging to the other party. If Customer is a governmental entity and required to retain certain Confidential Information after termination of this Agreement, then Customer shall retain only that portion of the Confidential Information that it is strictly required to retain under applicable law, return all other information to PES, and execute a reasonable non-disclosure agreement in connection with the retained Confidential Information.

#### 11. INFRINGEMENT.

- a. IP Infringement. PES shall defend and indemnify Customer from any damages, costs, liabilities, expenses (including reasonable and actual attorney's fees) actually incurred or finally adjudicated as to any third party claim or action alleging that the PES Apps infringe or misappropriate any third party's patent, copyright, trade secret or other intellectual property rights enforceable in the applicable jurisdiction (each a "Claim").
- b. IP Remedies. If any PES Offering becomes, or in PES's opinion is likely to become, the subject of an infringement or misappropriation claim, PES may, at its option and expense, either (i) procure for Customer the right to continue using such PES Offering; (ii) replace or modify the PES Offering so that it becomes non-infringing, or (iii) terminate Customer's right to use the PES Offering and issue Customer a refund for any Fees for periods after such termination. Notwithstanding the foregoing, PES will have no obligation or otherwise with respect to any infringement or misappropriation claim based upon: (A) any use of the PES Apps not in accordance with this Agreement or for purposes not intended by PES, (B) any use of the PES Offerings in combination with other products, equipment, software, or data not supplied or authorized by PES, (C) any use of any release of the PES Apps other than the most current release made available to Customer at no

additional charge; or (D) any modification of a PES Offering made by any person other than PES or an authorized representative or agent thereof. In any such case Customer will defend PES from any such claim against PES.

- c. Sole IP Liability. This Section is PES's sole obligation and liability, and Customer's sole remedy, for potential or actual intellectual property infringement relating to the PES Offerings.
- d. Procedures. The party seeking indemnification (the "Indemnified Party") must give prompt written notice of such Claim to the other party (the "Indemnifying Party"), accompanied by copies of any written documentation regarding the Claim received by the Indemnified Party. The Indemnifying Party shall compromise or defend, at its own expense and with its own counsel, any such Claim. The Indemnified Party will have the

right, at its option, to participate in the settlement or defense of any such Claim, with its own counsel and at its own expense; provided, however, that the Indemnifying Party will have the right to control such settlement or defense. The Indemnifying Party will not enter into any settlement that imposes any liability or obligation on the Indemnified Party without the Indemnified Party's prior written consent. The parties will cooperate in any settlement or defense and give each other full access to all relevant information, at the Indemnifying Party's expense.

- 12. **GOVERNMENT REGULATIONS.** Each party agrees to comply with all applicable import, export and anti-corruption statutes and regulations of the United States in connection with the manufacture, sale and distribution of the PES Offerings including, without limitation, the Foreign Corrupt Practices Act. Each party agrees to indemnify and hold harmless the other from all claims, demands, damages, costs, fines, penalties, attorneys' fees and all other expenses arising from a party's failure to comply with this Section and/or applicable laws, rules and/or regulations governing the PES Offerings.

### 13. LIMITATION OF LIABILITY.

- a. LIMITATION OF DAMAGES. UNDER NO CIRCUMSTANCES SHALL PES OR CUSTOMER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, INCLUDING CLAIMS FOR DAMAGES FOR LOST PROFITS, GOODWILL, USE OF MONEY, INTERRUPTED OR IMPAIRED USE OF THE PES OFFERINGS, AVAILABILITY OF DATA, STOPPAGE OF WORK, OR IMPAIRMENT OF OTHER ASSETS.
- b. LIMITATION OF LIABILITY. PES'S MAXIMUM LIABILITY FOR ALL CLAIMS OF LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED FIVE (5) TIMES THE FEES PAID BY OR ON BEHALF OF CUSTOMER IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE APPLICABLE CLAIM.
- c. Insurance. Each party shall be responsible to carry insurance in appropriate amounts to cover the activities conducted by it under this Agreement. Upon written request, PES agrees to provide Customer with evidence of its insurance coverages.

### 14. DISPUTE RESOLUTION.

- a. Limitation of Action. Except for claims arising from Customer's non-payment or underpayment of amounts owed to PES, any and all claims arising out of or related to this Agreement shall be barred, unless instituted either (i) within two (2) years from the date that the complaining party knew or should have known of the facts giving rise to a claim, or (ii) the applicable Florida statute of limitations, whichever is shorter.
- b. Governing Law. This Agreement and any claim or controversy arising hereunder (whether in contract, tort, or otherwise, including statutory, consumer protection, or common law) shall be governed by the laws of the State of Florida, without regard to conflicts of law. The UN Convention for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply. In any dispute, each party will bear its own attorneys' fees and costs.
- c. Mediation. In the event of any dispute, claim or disagreement arising out of or relating to this Agreement, the parties shall first submit the dispute, claim or disagreement to non-binding mediation administered by the American Arbitration Association (the "AAA") in accordance with its Commercial Mediation Procedures. The place of mediation shall be Fort Lauderdale, Broward County, Florida. The mediation shall be conducted by one (1) mediator selected in accordance with AAA rules, unless the parties otherwise mutually agree to a panel of three (3) mediators.
- d. Binding Arbitration. If the dispute, claim or disagreement is not resolved within sixty (60) days after the initial mediation meeting, then either party may submit the dispute, claim or disagreement to binding arbitration administered by the AAA in accordance with the provisions of its Commercial Arbitration Rules and, except as provided in Section 14(e) below, such arbitration shall be the sole means of dispute resolution. The place of arbitration shall be Fort Lauderdale, Broward County, Florida. The arbitration shall be conducted by one (1) arbitrator selected in accordance with the AAA rules, unless the parties otherwise mutually agree to a panel of three (3) arbitrators.
- e. Injunction. Notwithstanding anything in this Agreement to the contrary, each party shall be entitled to seek injunctive or other equitable relief without first submitting the matter to mediation or arbitration in accordance

with the provisions of this Section 14, even if a similar or related matter has already been referred to mediation or arbitration in accordance with the terms of this Section 14. Venue for any action permitted to be brought in court under this Section shall be the appropriate state and federal courts located in Fort Lauderdale, Broward County, Florida.

- 15. **SEVERABILITY.** If a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 16. **NOTICE.** Notices provided under this Agreement must be in writing and delivered to PES's or Customer's principal place of business as forth in the Purchase Order and/or Quote by: (a) certified mail, return receipt requested; (b) hand delivery; (c) e-mail with a confirmed read receipt; or (d) reputable overnight carrier service. In the case of delivery by e-mail, the notice must be followed by a copy of the notice being delivered by a means provided in (a), (b) or (d). The notice will be deemed given on the day the notice is received by the party receiving such notice.
- 17. **DESIGN CHANGES.** Except as otherwise agreed expressly in writing, PES may at any time furnish improvements to a product's design and/or construction. PES may also furnish suitable substitutes for materials that are unobtainable because of priorities or regulations established by governmental authorities or the non-availability of products from suppliers.
- 18. **MISCELLANEOUS.**
  - a. Merger Clause. In entering into this Agreement, neither party is relying upon any representations or statements of the other that are not fully expressed herein or therein; rather each party is relying on its own judgment and due diligence and expressly disclaims reliance upon any representations or statement not expressly set forth in this Agreement. In the event Customer issues User instructions, internal memoranda, or any other document addressing



any of the PES Offerings, it is hereby specifically agreed and understood that such writing is for the Customer's internal purposes only, and that any terms, provisions, and conditions contained therein shall in no way modify this Agreement

- b. Assignment & Successors Neither party may assign, subcontract, delegate or otherwise transfer this Agreement or any of its rights or obligations hereunder, nor may it contract with third parties to perform any of its obligations hereunder except as contemplated in this Agreement, without the other party's prior written consent, except that either party may, without the prior consent of the other, assign all its rights under this Agreement to (i) a purchaser of all or substantially all of its assets, or (ii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which either party is participating (collectively, a "Change in Control"); provided however, that the non-assigning party is given notice of the Change in Control and the assignee is not a competitor of the non-assigning party hereunder.
- c. Force Majeure No delay, failure, or default, other than a failure to pay Fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control (collectively, "Force Majeure"). In such event, however, the delayed party must promptly provide the other party notice of the Force Majeure. The delayed party's time for performance will be excused for the duration of the Force Majeure, but if the Force Majeure event lasts longer than thirty (30) days, the other party may immediately terminate any unfulfilled Purchase Order.
- d. Waiver & Breach Neither party will be deemed to have waived any of its rights under this Agreement, unless it is an explicit written waiver made by an authorized representative. No waiver of a breach will constitute a waiver of any other breach.
- e. Survival of Terms Unless otherwise stated, all of PES's and Customer's respective obligations, representations and warranties under this Agreement which are not, by the express their terms, fully to be performed during the Term shall survive the termination of this Agreement. Without limiting the foregoing, the provisions of Terms and Conditions Sections 2(d), 6, 9, 10, 13, and 14 shall survive any termination of this Agreement.
- f. Authority An individual executing or delivering a Quote or a Purchase Order hereunder acknowledges that he or she has the authority to act on behalf of the Customer or PES, as the case may be, and bind such party to the terms hereof.
- g. Signatures Electronic signatures on any portion of this Agreement (or copies of signatures sent via electronic means) are the equivalent of handwritten signatures and are fully enforceable.

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**EXHIBIT D**  
**Mobile App Terms & Conditions**

**PES Disclaimers:** Pediatric Emergency Standards Inc. ("PES") does not make clinical or medical decisions. User's (COUNTY) use of the Handtevy Materials (the "Materials") is not a substitute for its hiring and employment of competent, properly trained and knowledgeable staff that bring professional judgment and analysis to use of the Materials. It is the responsibility of User to exercise independent medical knowledge in making medical decisions on a case-by-case basis, and the Materials are intended to be used only as a guide. For use herein, the term "User" means (COUNTY) the buyer of the Materials, and its officers, directors, employees, agents, representatives, and contractors.

The Materials are user-agnostic, and: (i) are based on established industry standards and/or nationally recognized guidelines for the treatment of children in the emergency medical context; (ii) are based on the experience of reputable, thought-leader institutions; and/or (iii) are supported by peer-reviewed clinical literature; AND (iv) are not sourced from or funded by pharmaceutical or other companies with a commercial interest in the content; AND (v) will be continuously updated by PES if established industry standards and nationally recognized guidelines evolve. PES has assembled the materials from third party sources. In so doing, PES has exercised reasonable due diligence and professional judgment in evaluating and selecting the Materials for inclusion.

The Materials must be customized by User prior to use based on its guidelines, protocols, drug options, drug concentrations, drug dosages, equipment size and other applicable factors (the "Customized Materials"). User must continuously ensure the accuracy of the Customized Materials based on changes to its guidelines, protocols, drug options, drug concentrations, drug dosages, equipment size and changes in nationally recognized guidelines. PES highly recommends prompt revision and updating of the Customized Materials when User's medical staff, employees and/or contractors make modifications to User's guidelines.

Furthermore, the age of a child may be used to determine a child's weight ONLY in children of average size. PLEASE NOTE that a length based tape SHOULD be used on children of short or tall stature or those with chronic illnesses.

Each User must exercise reasonable due diligence and professional judgment in determining whether to use age or a length-based tape in assessing body weight. Such determinations must be based on various factors specific to a user such as, without limitation, its guidelines, protocols, drug options, drug concentrations, drug dosages, equipment size and other factors.

**USER CANNOT CONTROL THE FLOW OF DATA TO OR FROM ITS NETWORK AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICE PROVIDERS OR THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES MAY IMPAIR OR DISRUPT USER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). FOR THIS REASON, PES URGES THAT USER AND ITS MEDICAL PERSONNEL MAINTAIN HARD COPIES OF THE PES MATERIALS, OR MAINTAIN OTHER BACKUP OPTIONS IN THE FIELD AT ALL TIMES, IN THE EVENT THAT ACCESS TO ELECTRONIC VERSIONS OF THE PES MATERIALS IS INTERRUPTED OR UNAVAILABLE. ACCORDINGLY, PES DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS. EXCEPT FOR THE WARRANTIES SPECIFICALLY AND EXPRESSLY MADE HEREIN, PES MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR WARRANTIES OF FITNESS, AND ALL SUCH WARRANTIES ARE DISCLAIMED.**



Bruce Barton  
Director

Date: August 15, 2023  
From: Dan Bates, EMS Administrator  
To: Board of Supervisors/Purchasing Agent  
Via: Anita Newland – Administrative Services Analyst  
Jorge Uribe – Buyer II (951) 470-5684  
Subject: Sole Source Procurement; Request for Procurement of the Handtevy Pediatric Resuscitation System suite

The below information is provided in support of my Department requesting approval for a sole or single source.

**1. Supplier being requested:**

**2. Vendor ID: 0000251109**

**3.  Single Source                       Sole Source**

**4. Have you previously requested and received approval for a sole or single source request for this vendor for your department? (If yes, please provide the approved sole or single source number).**

Yes                                       No  
SSJ# \_\_\_\_\_

**4a. Was the request approved for a different project?**

Yes                                       No

**5. Supply/Service being requested:**

One-time procurement of the Handtevy Pediatric Resuscitation System suite (to include customization, setup, and annual access to the Handtevy mobile application, two-hundred seventy-five (275) custom Handtevy length-based resuscitation tapes, twenty (20) Handtevy Instructor Certification courses and one (1) Handtevy Prehospital Pediatric Instructor Course). Access to the Handtevy Medication Management Software, as well as unlimited software updates and clinical / technical support, will be included with this one-time procurement cost then renewed annually every year after upon payment of that year’s annual fee.





## 6. Unique features of the supply/service being requested from this supplier.

- The Handtevy Pediatric System suite includes a proprietary Medication Management Software that sets it apart as an innovative solution in acute patient care. This software empowers healthcare providers to meticulously tailor custom medication and equipment found in Handtevy Mobile to align perfectly with their specific pediatric and adult protocols. The proprietary nature of this software ensures a unique and tailored approach to acute patient treatment, fostering accuracy and confidence among pre-hospital clinicians. The inherent customization capabilities of this software make it an essential component of the Handtevy System, firmly establishing it as a sole source solution for optimal patient care.
- PES offers a clinical team comprised of pediatric physicians, nurses, paramedics and pharmacists for ongoing support.
- The Handtevy System is the only “hybrid” system in the industry. Hybrid means both age based and length based offering providers a way to determine weight for dosing via age or length.
- The Handtevy System is the only system that addresses children from preemie to age thirteen, and includes adult options as well.
- Custom medication and equipment guides created by the provider (addressed in #1) can be utilized in hard copy or via Handtevy Mobile. Hard copy medication guides are tear-proof, and water-proof. Reproduction of the hard copy medication guide is not permitted due version control, liability and copyright issues.
- Handtevy Mobile is the only platform that offers custom medication dosing and equipment sizing on a mobile platform that can integrate into the ePCR for data collection, and is proprietary to Pediatric Emergency Standards, Inc.
- The Handtevy Instructor Course is only taught by PES employed educators and is meant to be utilized with the Handtevy Pediatric System.
- The Handtevy Pediatric Bag is the only bag that utilizes ages to correspond with the Handtevy dosing system.

## 7. Reasons why my department requires these unique features from the vendor and what benefit will accrue to the county:

The Handtevy Pediatric Resuscitation System suite of products is truly unique and nothing else like it currently exists in EMS. Additionally, the largest advanced life support provider in Riverside County currently utilizes Handtevy and its adoption and distribution county-wide will help REMSA achieve its goal of providing patient care using a systems-based approach.

The software is fully customizable and will conform to all REMSA-treatment protocols as adopted by REMSA at the direction of the REMSA Medical Director. Additionally, Handtevy is able to integrate with REMSA’s electronic Patient Care Reporting (ePCR) system, allowing for documentation created within the Handtevy mobile application to be uploaded directly into the patient’s care record via Bluetooth at the scene of the incident. It is available on all Android, iOS, and Windows operating systems, making it accessible for all prehospital users.



The Handtevy Pediatric Resuscitation System suite provides paramedics with the opportunity to cognitively offload the task of performing weight-based medication calculations while treating sick and injured children, allowing them to focus on patient care, not medication math. This will effectively reduce medication errors, greatly reducing the risk of patient harm.

**8. Period of Performance:** From: FY 23/24 to FY 27/28  
(total number of years)

Is this an annually renewable contract?  No  Yes  
Is this a fixed-term agreement:  No  Yes

**9. Identify all costs for this requested purchase. In addition, please include any single or sole source amounts previously approved and related to this project and vendor in the section designated below for current and future fiscal years. You do not need to include previous fiscal year amounts. If approval is for multiple years, ongoing costs must be identified below. If annual increases apply to ongoing costs such as CPI or other contract increases, provide the estimated annual cost for each consecutive year. If the annual increase may exceed the Purchasing Agent’s authority, Board approval must be obtained. (Note: ongoing costs may include but are not limited to subscriptions, licenses, maintenance, support, etc.)**

Description:	FY23/24	FY24/25	FY25/26	FY26/27	FY27/28	Total
One-time Costs:						
Customization and Setup for Handtevy Mobile, Medication Management Software Access/Support, Length-Based Measuring Tape, Instructor Course and Certifications	\$83,554.13					\$83,554.13
Ongoing Costs:						
Medication Management Software Access/Support		\$48,459.41	\$50,882.38	\$53,426.50	\$56,097.83	\$208,866.12
<b>Total Costs</b>	<b>\$83,554.13</b>	<b>\$48,459.41</b>	<b>\$50,882.38</b>	<b>\$53,426.50</b>	<b>\$56,097.83</b>	<b>\$292,420.25</b>

Note: Insert additional rows as needed

**10. Price Reasonableness:**

As compared to other proprietary software programs and annual support/maintenance fees charged, the cost is significantly less expensive.

**11. Projected Board of Supervisor Date (if applicable):** September 12, 2023

(Draft Form 11s, service agreement and or quotes must accompany the sole source request for Purchasing Agent approval.)





Bruce Barton

08/23/2023

Department Head Signature  
(or designee)

Print Name

Date

-----  
**The section below is to be completed by the Purchasing Agent or designee.**  
-----

Purchasing Department Comments:

**Approve**

**Approve with Condition/s**

**Disapprove**

Condition/s:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

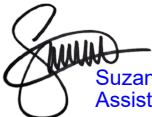
**Not to exceed:**

**One-time** \$ \_\_\_\_\_

**Annual Amount** \$ \_\_\_\_\_ / per fiscal year through \_\_\_\_\_ (date)

*(If Annual Amount Varies each FY)*

FY <u>2324</u>	:	\$ <u>83,554.13</u>
FY <u>2425</u>	:	\$ <u>48,459.41</u>
FY <u>2526</u>	:	\$ <u>50,882.38</u>
FY <u>2627</u>	:	\$ <u>53,426.50</u>
FY <u>2728</u>	:	\$ <u>56,097.83</u>



Suzanna Hinckley,  
Assistant Director

08/23/2023

**24-059**

**Purchasing Agent**

**Date**

**Approval Number**  
(Reference on Purchasing Documents)



Home > My Request - RITM0283365

Number  
RITM0283365

Created: 8mo ago  
Updated: 7mo ago  
State: **Closed Complete**

## Policy H-11 Technology Procurement for EMD

Item  
Policy H-11, Techn...

Requested for  
 **Jorge Uribe**

Stage  
▶ Completed

### Additional Details

Activity

Tasks

Attachments

Requested for:  
Jorge Uribe

Department:  
EMD

**Approving Supervisor/Manager:**

Hilda Leyva

**Alternate Contact:**

Anita Newland

**Requested Purchase:**

Handtevy Mobile Medication Management Software and Support

**Describe Requested Purchase:**

Handtevy Mobile Medication Management Platform allows for prehospital care for pediatric patients. The software removes the need for mathematical calculations by first responders while on scene and during treatment, and ensure proper treatment, dosing and protocols based on pediatric requirements. The software is compatible and interfaces with the REMSA approved Electronic Patient Care Reporting system.

**Hardware**

false

**Professional Services**

false

**Software**

false

**Other**

true

**Purchase Requested:**

New

**Procurement Status:**

Bid Complete

**Run the Business**

true

**Grow the Business**

false

**Transform the Business**

false

**Reduce Expenses**

false

**Support Current Operations**

true

**Improve Customer Service**

false

**Improve Operational Efficiencies**

false

**Is this a multi-year contract?**

Yes

**Length of Contract (In Years) :**

5

**Start Date:**

07-01-2023

**End Date:**

06-30-2028

**Is this Purchase or Lease?**



**Is this Purchase or Lease?**

Purchase

**Estimated Amount:**

292420.25

**Notes:**

\$292,420.25 estimated cost for five years. SSJ is currently sent for approval.

**BRM: Please choose approve or reject:**

Approve

**CCB: Please choose option:**

N/A

**TSB: Please choose option:**

N/A

**ISO: Please choose option:**

Approve

**SAM: Please choose option:**

Approve

**TSOC: Please choose approve, reject or n/a:**

Approve





# RIVERSIDE COUNTY INFORMATION TECHNOLOGY PROCUREMENT FORM

<b>H11 Number:</b>	
<b>Requested Purchase:</b>	Handtevy Pediatric Medication Management Software
<b>Department/Agency:</b>	Emergency Management Department
<b>Primary Contact/Phone:</b>	Dan Bates/ (951) 358-5029
<b>Alternate Contact/Phone:</b>	Dan Bates/ (951) 712-3452
<b>Purchase Request Type:</b>	
<b>Describe Requested Purchase:</b>	Handtevy Mobile Medication Management Software and Support
<b>Terms:</b>	<p>Is this a Multi-Year Agreement: Yes</p> <p>Length of Agreement: 5 years</p> <p>Start Date: July 2023</p> <p>End Date: June 2028</p>
<b>Business Needs Addressed:</b>	Handtevy Mobile Medication Management Platform allows for prehospital care for pediatric patients. The software removes the need for mathematical calculations by first responders while on scene and during treatment, and ensure proper treatment, dosing and protocols based on pediatric requirements. The software is compatible and interfaces with the REMSA approved Electronic Patient Care Reporting system.
<b>Are there other county systems that provide the same functionality?</b>	No
<b>Business Criticality:</b>	
<b>Business Impact:</b>	Support current operations, improve customer service, improve operational efficiencies

Current Cost itemization (Include all the year 1 cost)							
Item Description	Purchase Type	Vendor	Quantity	Unit Cost	Sub_Total	Item Tax	Total Cost
First Year Customization and Setup for Handtevy Mobile, Medication Management Software Access/Support	Software – New Purchase	Handtevy	1	\$62,865.57	\$62,865.57		\$62,865.57
Length-based Measuring Tape	New Purchase	Handtevy	75	\$50.00	\$3,750.00		\$3,750.00
Handtevy Instructor Certification	Services/Consulting – New	Handtevy	20	\$299.00	\$5,980.00		\$5,980.00
Handtevy Prehospital Pediatric Instructor Course on Location with Handtevy Instructor	Services/Consulting – New	Handtevy	1	\$2,495.00	\$2,495.00		\$2,495.00
Length-based Measuring Tape	New Purchase	Handtevy	200	\$50.00	\$10,000.00		\$10,000.00
Discount Line Item	Discount	Handtevy	1	(\$1,750.00)	(\$1,750.00)		(\$1,750.00)
Shipping	Shipping	Handtevy	1	\$213.56	\$213.56		\$213.56
<b>Total:</b>							<b>\$83,554.13</b>



# RIVERSIDE COUNTY INFORMATION TECHNOLOGY PROCUREMENT FORM

## Annual Costs

Item Description	Payment Type	Terms (in Years)	Payment amount	Total Annual Payments
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## Accounting String

To be completed for pass-thru purchases that will be processed by RCIT Only

%Billed	Accounts (6 digits)	Dept.ID (6 -10 digits)	Program (5 digits)	Class (5 digits)	Grant (9 digits)	Customer Project Code (10 digits)
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Department Head Signature:  
(or Authorized designee)

Date:

## RCIT Review (Standard purchases and renewals < \$25000) - Administrative Review Status

Recommended:

By:

Date:

Denial Explanation:

## ACIO Review - ACIO Review Status

Recommended:

BY:

Date:

Denial Explanation:

## CIO Review (Purchases and renewals >\$100K) CIO Review Status

Recommended:

By:

Date:

Denial Explanation:

## TSOC Review (Purchases and renewals >\$100K) TSOC Review Status

Recommended:

By:

Date:

Denial Explanation:



# Quote

**Company Info:** Pediatric Emergency Standards, Inc.  
11860 W. State Road 84 Suite B1  
Davie, FL 33325

**Expiration Date:** 5/31/2024  
**Quote Number:** Q-05166

**Phone:** (954) 944-1114  
**FAX:** (954) 653-3792

**Account Name:** Riverside County EMS Agency (REMSA)  
**Account #:** 100398

**Client Contact:**  
**Account Rep:** Patrick Bavaro

**Bill To:**  
Riverside, California

**Ship To:**  
Riverside, California

Product Code	Description	Quantity	List Price	Discount, %	Unit Price	Total
HMP2023	Customization and Setup for Handtevy Mobile	1.000	\$16,713.75	0.00	\$16,713.75	\$16,713.75
HMPA2023	Annual access to Handtevy Mobile. Access to Medication Management Software, Unlimited Updates Included, Clinical and Technical support	1.000	\$46,151.82	0.00	\$46,151.82	\$46,151.82
HPB004	Length-based measuring tape	75.000	\$50.00	20.00	\$40.00	\$3,000.00
HPC400	2 Year Handtevy Instructor Certification 8 CEUs [CAPCE Certified]	20.000	\$299.00	0.00	\$299.00	\$5,980.00
HPC401	Handtevy Prehospital Pediatric Instructor Course on location with Handtevy Instructor	1.000	\$2,495.00	0.00	\$2,495.00	\$2,495.00
HPB004	Length-based measuring tape	200.000	\$50.00	10.00	\$45.00	\$9,000.00

**Subtotal** \$85,090.57  
**Discount** \$1,750.00  
**Total Price** \$83,340.57  
**Tax** \$0.00  
**Shipping and Handling** \$213.56  
**Total** \$83,554.13

To place an order, please email or fax a copy of the signed Quote and Purchase Order to: [Sales@Handtevy.com](mailto:Sales@Handtevy.com) or (954) 653-3792.

PES requires execution of a Purchase Order for all sales above \$5,000 before applicable freight and taxes. The undersigned, on behalf of Customer, represents that he or she has the authority to sign this Quote and/or Purchase Order, and is bound hereby and agrees to the terms, conditions and pricing denoted and attached. Taxes, shipping and handling fees are estimates only and are subject to change at the time of order. Customer may provide PES with a tax exemption certificate, if applicable.

It is our customers responsibility to provide the most up-to-date and accurate protocol set. Additional fees will apply in the event a protocol set was submitted in error once customization has been initiated.

<hr/> <p>(Print Name)</p> <hr/>	<hr/> <p>(Title)</p> <hr/>
<hr/> <p>(Authorized Signature)</p>	<hr/> <p>(Effective Date)</p>

# PEDIATRIC EMERGENCY STANDARDS, INC.

## TERMS AND CONDITIONS

### 1. DEFINITIONS.

- a. “Agreement.” The Quote, these Terms and Conditions, and the Purchase Order or the signed Quote and these Terms and Conditions shall constitute an agreement of the parties and be collectively referred to as the “Agreement.”
- b. “Customer” shall be identified as such on the Quote.
- c. “Customer Data” means data entered by Customer relating to its patients that is entered into or transmitted through the PES Apps.
- d. “Customer Protocols” means the medical practices, protocols, and guidelines adopted or used by Customer for patient care, including all drug concentrations, drug dosages, equipment sizes, and other practices adopted by Customer, formally or informally, from time to time.
- e. “Customized” or “Customization” means changes to the PES Apps created by PES at Customer’s request and for Customer’s benefit in order for Customer to operate the PES Apps in a manner consistent with Customer’s Protocols.
- f. “Customized Offerings” means the PES Offerings that have been approved by Customer after Customization.
- g. “Effective Date” means the date Customer delivers a signed Purchase Order to PES.
- h. “Initial Term” means the thirteen (13) month period commencing on the Effective Date.
- i. “PES” means Pediatric Emergency Standards, Inc.
- j. “PES Apps” means the software application(s) licensed by Customer pursuant to this Agreement as referenced on the Quote.
- k. “PES Materials” means any durable goods provided by PES to Customer as identified in the Quote.
- l. “PES Offerings.” The PES Apps, the PES Materials, and the PES Services are sometimes collectively referred to as the “PES Offerings.”
- m. “PES Services” means professional services provided by PES to Customer as identified in the Quote, which may include Customization, education and training courses, and other support services.
- n. “Purchase Order” means a document signed by Customer evidencing acceptance of the Quote.
- o. “Quote” means an offer by PES to provide certain PES Offerings at a price and on terms set forth therein and in these Terms and Conditions. These Terms and Conditions are incorporated into the Quote.
- p. “Renewal Term” means a twelve (12) month period commencing on an anniversary of the Subscription Start Date in the event that Customer elects to renew this Agreement pursuant to Section 7(a) below.
- q. “SaaS” means software-as-a-service.
- r. “Subscription Start Date” means the date that is (i) thirty (30) days after the Effective Date, or (ii) such earlier date as agreed to in writing by PES and Customer.
- s. The “Term” shall begin on the Effective Date and continue until this Agreement is terminated or not renewed by either party in accordance with Section 7 below.
- t. “User” means any individual that is an employee of or is or works for a contractor of Customer and that uses PES Offerings, whether authorized by Customer to do so or not.

### 2. LICENSE.

- a. License Grant. Subject to the terms of this Agreement, beginning on the Effective Date and during the Term, PES grants Customer a personal, non-exclusive license to access and use the PES Offerings. With respect to PES Apps, such license shall be in object code form only.
- b. Customization. Clinical guidelines and related clinical content contained in the PES Offerings must be approved by Customer pursuant to the Customization process prior to use in connection with patient care. Between the Effective Date and the Subscription Start Date is a thirty (30) day grace period during which Customer shall complete the Customization process. Both PES and Customer will make reasonable efforts to ensure that Customer is “live” on the PES Apps as quickly as possible, however, in no event will the Subscription Start Date be modified for implementation delays due to Customer. Customer shall have an ongoing obligation to monitor and update the Customized Offerings to ensure consistency with Customer’s Protocols, as Customer’s Protocols may evolve over time. Customer shall submit a written request to PES for prompt revision and

updating of the Customized Offerings when Customer or its medical staff, employees and/or contractors make modifications to Customer’s Protocols.

- c. Improvements. Customer agrees that any improvements or modifications to the PES Offerings shall belong to PES. Customer hereby grants, transfers and assigns (and agrees to grant, transfer and assign) to PES any and all of Customer’s right, title and interest in and to such improvements or modifications. PES shall not be restricted in any manner in its use of any intellectual property created by it hereunder for Customer. The foregoing grant, transfer and assignment (and agreement to grant, transfer and assign) also applies to any enhancement or improvement recommended orally or in writing by Customer to PES.
- d. Exclusions. The foregoing license does not include the right to, and Customer has no right to: (i) decompile, reverse engineer, disassemble, print, copy or display the PES Offerings in whole or in part or otherwise reduce the PES Apps to a human perceivable form in whole or in part; (ii) publish, release, rent, lease, sublicense, loan, sell, distribute or transfer all or any portion of the PES Offerings to another person or entity; (iii) use or reproduce the PES Offerings for the use or benefit of anyone other than in connection with Customer’s business enterprise; (iv) alter, modify or create derivative works of the PES Offerings in whole or in part; (v) use or permit the use of the PES Offerings for commercial time-sharing arrangements or providing service bureau, data processing, rental, or other services to any third party, or (vi) use the PES Offerings or any part or aspect thereof for any unlawful purpose or to mislead or harass anyone. Use of or access to the PES Offerings in violation of the terms hereof is strictly prohibited. The rights granted Customer hereunder do not constitute a sale of any PES Offerings. PES retains all right, title, and interest in and to the PES Offerings, including without limitation all software used to provide the PES Apps (and access via the SaaS), all graphics, user interfaces, logos and trademarks reproduced through the SaaS, and all goodwill associated with any of the foregoing, except to the limited extent of Customer’s license during the Term as set forth herein. Customer’s permission to access or use the PES Offerings may be limited or suspended immediately if, in PES’s discretion, this Section or any other provision of this Agreement has been violated by Customer or any of its Users. Customer agrees that a violation of this Section will cause PES irreparable and immediate harm, and that PES is entitled to injunctive relief to prevent such violation. Customer recognizes that the PES Offerings are protected by copyright and other laws.

### 3. FEES.

- a. Fees. Throughout the Term, Customer shall pay PES the fees and other amounts (collectively, “Fees”) for the PES Offerings as set forth in the Quote. Certain amounts set forth in the Quote, such as applicable taxes, duties, and shipping and handling fees for PES Materials, are estimates and may be subject to final pricing at the time of delivery. If applicable to Customer’s business, Customer may provide PES with a tax exemption certificate.
- b. Payment. In the case of PES Apps, Fees shall be due in full on the Subscription Start Date and each anniversary thereof. In the case of courses, payment must be made IN FULL at least twenty-four (24) hours prior to the course start time. In all other cases, Fees are due within thirty (30) days of invoice.
- c. Suspension of Services. PES may suspend Customer’s access to and use of the PES Offerings if Customer fails to timely remit payment or is otherwise in material default hereunder. Any notices of default/termination and suspension may be combined.
- d. Discounts. Items or services listed at no charge on a Quote are included as part of a package discount or a subscription offering. Customer is responsible for appropriately allocating the discount extended on package pricing when fulfilling any reporting obligations.
- e. Fee Increases for PES Apps. Fees for PES Apps may increase by up to five percent (5%) each year, in the sole discretion of PES. Customer will be notified of any Fee increase at least thirty (30) days prior to the end of the Initial Term or Renewal Term, as applicable.
- f. Fee Increases for PES Materials or PES Services. PES may institute Fee increases for PES Materials and/or PES Services without notice to its



customers. Any such Fee increases would not be retroactively applied.

- g. **Taxes and Fees.** Fees payable to PES are exclusive of all foreign, federal, state, and local taxes, including, without limitation, applicable sales, use, duty, customs, withholding, property, value-added, or similar sales-like taxes, tax-like charges, fees and liabilities, and credit card processing fees (but not including taxes based on PES's income) ("Taxes and Fees"), all of which shall be the responsibility of Customer. To the extent permitted by applicable law, Customer is responsible for and will remit (or will reimburse PES upon PES's request) such Taxes and Fees as may be paid by PES on Customer's behalf.
- h. **Appropriation of Funds.** If Customer is a city, county or other government entity, the parties agree that Customer may terminate the PES Apps and PES Services at the end of the Customer's fiscal term for a failure by Customer's governing body to appropriate sufficient funds to enable Customer to acquire the PES Apps and/or PES Services for the next fiscal year. Notwithstanding the foregoing, this provision shall not excuse Customer from past payment obligations or other Fees earned and unpaid as of the end of such Customer's fiscal term. Moreover, Customer agrees to provide PES with reasonable documentation evidencing such non-appropriation of funds.
- i. **Third Party Payer.** If a third party pays some or all Fees on behalf of Customer ("Third Party Payer"), the Third Party Payer must submit a Purchase Order directly. Customer shall immediately pay (and shall remain jointly and severally liable) for payment if the Third party Payer does not timely pay the Fees.
- j. **Late Fees.** In the event that any Fees are not paid within thirty (30) days of when due, such overdue amounts may, in the sole discretion of PES and to the extent permitted by applicable law, accrue interest until paid in full at a rate equal to the lesser of (i) one and one-half (1.5%) percent per month, or (ii) the maximum legal rate. Customer's payment will not waive or extend any obligation of Customer to make ongoing payments, as and when due.
- k. **Audit Rights.** PES may reasonably audit Customer's use of the PES Offerings and charge Customer a higher Fee if Customer's usage includes facilities, Users, patient populations, or services beyond the scope determined in development of the Quote.
- l. **Supplemental Quotes and Purchase Orders.** PES and Customer may execute and exchange additional or supplemental Quotes and/or Purchase Orders that will be subject to these Terms and Conditions and become part of this Agreement.

#### 4. DELIVERY.

- a. **PES Apps.** PES shall provide Customer access to PES Apps through a reasonable system of electronic downloads. PES shall grant Customer access promptly following completion of the Customization process.
- b. **PES Materials.** Delivery dates for PES Materials are not guaranteed. In the absence of shipping instructions from Customer, PES will obtain shipping rates on the Customer's behalf and for Customer's account. Delivery shall be FOB PES, point of shipment, and title and risk of loss shall pass to the Customer once delivered to Customer's point of shipment. PES will not be liable for any loss or damage of any kind due to delays in delivery or non-delivery resulting from any cause including, but not limited to, acts of God, labor disputes, governmental authority or edict, war, civil unrest, terrorist acts, delays in manufacture, failure of Customer to obtain any required license or permit, or the inability of PES to obtain goods from its usual sources. Any such delay shall not be considered a breach of any obligation by PES, and the delivery dates shall be extended for the length of such delay.

#### 5. SERVICE LEVEL AGREEMENT.

- a. **Hosting.** PES shall be responsible for hosting and managing PES Apps.
- b. **Service Level Agreement.** For each calendar month during the Term, PES shall use commercially reasonable efforts to ensure that the PES Apps accessed by Customer via SaaS will maintain a level of uptime equal to or better than ninety-nine percent (99%) (the "Service Level Agreement" or "SLA"). "Uptime" will be calculated using the following formula: Uptime = (T-TNF) x 100/T where "T" is the total number of hours that the PES App(s) is typically used per month (determined by multiplying the number of hours per day that the PES App(s) is typically used by the number of days per week that the PES App(s) is typically used, and multiplying the result by 4-5 weeks in a month), and "TNF" is the number of hours the PES App(s) or any component of the PES App(s) licensed by Customer under the applicable Purchase Order is not functional or otherwise unavailable

during the month for any reason other than Scheduled Downtime (as defined below) or as a result of the Permitted Exclusions (as defined below) (the hours calculated will only include those hours that the such PES Apps would typically be in use). If any material portion of the total functionality of the PES App(s) is unavailable for operational use, the PES App(s) will be considered down from the time that Customer notifies PES that a PES App(s) is non-functional and the time that such PES App(s) is serviced and made available for use. A minimum of ninety-nine percent (99%) performance is based on the network hardware being operational.

A PES App will be not considered down if the reason for the unavailability is a result of: (i) Scheduled Downtime or (ii) a Permitted Exclusion.

If the SLA is not met in any calendar month (other than as a result of Scheduled Downtime or a Permitted Exclusion), PES shall provide Customer, as its sole and exclusive remedy, a credit equal to two percent (2%) of the prorated monthly Fee for the month that the PES App(s) was unavailable (the "Prorated Monthly Fee"), plus an additional one percent (1%) of the Prorated Monthly Fee for each one percent (1%) that applicable Uptime is less than 99%, up to an aggregate maximum credit of six percent (6%) of the Prorated Monthly Fee. PES shall calculate Uptime and any service level downtime using its system logs and other records.

- c. **Scheduled Downtime.** If PES determines that it must intentionally interrupt the PES Apps or that there is a potential for the PES Apps to be interrupted to conduct system maintenance (collectively, "Scheduled Downtime"), PES will use good-faith efforts to notify Customer of such Scheduled Downtime at least forty-eight (48) hours in advance, and will use commercially reasonable efforts to ensure that Scheduled Downtime occurs during the hours of 12:00 a.m. to 6:00 a.m. Central Time.
- d. **Permitted Exclusions.** Notwithstanding any other provision of this Agreement to the contrary, performance issues resulting from any of the following shall be considered a "Permitted Exclusion" for purposes of the SLA: (i) any force majeure or other event caused by factors outside of PES's reasonable control; (ii) any actions or inactions of Customer or any third parties; (iii) any third party or Customer-provided network, hardware, device or equipment failure; or (iv) general Internet operations problems. PES shall only be responsible for hardware and software upon which its PES Apps are hosted and its internet service provider up to the point its internet service provider connects with the public internet. Customer-provided network hardware support (i.e. file servers, workstations, hubs, routers, etc.) is the responsibility of Customer.
- e. **Customer Must Request Service Credit.** To receive a credit pursuant to Section 5(b), Customer must notify PES by email or otherwise in writing of its request, with receipt confirmation, within thirty (30) days of service interruption.

#### 6. CUSTOMER DATA/ PRIVACY.

- a. **Ownership and Use of Data.** Except as provided below, unless it receives Customer's prior written consent, PES shall not: (i) access, process, or otherwise use Customer Data; or (ii) intentionally grant any third party access to Customer Data, including without limitation, PES's other customers, except PES subcontractors that are subject to a reasonable nondisclosure agreement. As between PES and Customer, all Customer Data shall be owned by Customer. Notwithstanding the foregoing, PES may use and disclose Customer Data to fulfill its obligations under this Agreement or as required by applicable law or by proper legal or governmental authority. To the extent that it is not prohibited from doing so by law or the terms of such legal or governmental demand, PES shall give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer's expense.
- b. **Anonymized Data.** Notwithstanding any provision herein, PES may use, reproduce, license, or otherwise exploit Anonymized Data, provided that Anonymized Data does not contain and is not PHI (as defined in the Health Insurance Portability and Accountability Act of 1996 and its related regulations, as each may be amended). "Anonymized Data" means Customer Data with PHI and the names and addresses of Customer and its Users removed.

#### 7. TERM; TERMINATION.

- a. **Renewal Upon Payment of Fees.** Thirty (30) days prior to each anniversary of the Subscription Start Date, PES shall invoice Customer for Fees for the next twelve (12) month period. Payment of such Fees by Customer shall constitute a renewal of this Agreement for an additional twelve (12) month Renewal Term, during which time this Agreement may only be terminated

- either (i) by mutual agreement of the parties, or (ii) for Cause pursuant to Section 7(c) below.
- b. **Non-Renewal.** Customer may elect not to pay Fees for a Renewal Term, in which event this Agreement and Customer's access to the PES Apps shall terminate at the end of the Initial Term or Renewal Term then in effect. PES may elect not to renew this Agreement for a Renewal Term by providing Customer with at least thirty (30) days advance written notice, in which event this Agreement and Customer's access to the PES Apps shall terminate at the end of the Initial Term or Renewal Term then in effect.
  - c. **Termination for Cause.** Either party may terminate this Agreement, and Customer's use of the PES Offerings, for "Cause" in the event that:
    - i. Either party breaches a material provision of this Agreement (which shall include non-payment of Fees) and such breach is not cured within 30 days after written notice is provided to the breaching party. Customer's access to the PES Offerings may be suspended during the 30-day cure period if the breach would cause potential damage to PES or otherwise renders Customer's continued use thereof unsafe;
    - ii. Either party files a petition in bankruptcy, whether voluntary or involuntary, or an assignment for the benefit of creditors, in which event termination shall be effective immediately; or
    - iii. Customer breaches or threatens to breach any of the provisions of: (A) Section 2(d) with respect to exclusions to Customer's license hereunder; or (B) Section 10 regarding confidentiality. Termination pursuant to this Section 7(c)(iii) shall be immediate upon written notice by PES.
  - d. **Purchase Order Cancellation or Change.** After the Effective Date, Purchase Orders may not be cancelled, changed, suspended or deferred without the express, written consent of PES. Customer agrees to pay all Fees and costs associated with any cancellation, change, suspension or deferral of a Purchase Order including, without limitation, for PES's Customization work and PES's efforts to mitigate damages. If PES agrees to allow cancellation of a Purchase Order, then this Agreement shall terminate as of the date of such mutual agreement, otherwise, this Agreement and Customer's obligation to pay Fees shall continue for the remainder of the Term.
  - e. **Returns.** PES Materials may be returned for a refund within thirty (30) days of the delivery date; provided, that returned PES Materials will not be accepted if they have been used or are not in good condition. Customized PES Offerings are non-refundable. If accepted, returned PES Materials are subject to a fifteen percent (15%) restocking fee. Return shipping fees are Customer's responsibility. If Customer desires to return PES Materials, Customer must first call PES Customer Service at 866.867.3192 and obtain a Return Goods Authorization Number (RGA#). Customer must then repackage PES Materials and mail them to Pediatric Emergency Standards, Inc., 11870 State Road 84, Suite C5, Davie, Florida 33325. PES Materials that are returned without prior authorization will be refused, and the carrier will charge Customer freight in both directions. If PES accepts returned items and issues a refund pursuant to this Section, then this Agreement shall terminate as of such refund date.
  - f. **Effect of Termination.** Upon any termination of this Agreement pursuant to this Section 7, Customer's license to use and access to the PES Offerings will immediately cease and all Fees due hereunder shall be immediately due and payable; provided, however, that, in the event Customer terminates this Agreement pursuant to Section 7(c)(i) as a result of an uncured breach by PES or pursuant to Section 7(c)(ii) in the event PES files a petition in bankruptcy or makes an assignment for the benefit of creditors, then Customer shall be relieved of any further obligation to pay Fees and PES shall refund to Customer prorated Fees already paid by Customer for the remainder of the Term. The applicability of certain provisions in this Agreement shall survive termination as set forth in Section 18(e) below.
- 8. SERVICE AND REPAIRS.** Updates to the PES Apps shall be made available to Customer at no additional charge. All service and/or repairs are performed wholly or in part at the discretion of PES. PES Materials damaged in delivery will be replaced at no cost to the Customer. Damage caused by wear and tear, abuse or accident is at the expense of Customer. The remedies provided herein are exclusive.
- 9. DISCLAIMERS.**
- a. **Disclaimer of Warranties.** EXCEPT AS PROVIDED HEREIN, THE PES OFFERINGS ARE PROVIDED ON AN "AS IS" BASIS, AND PES EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES RELATED THERETO, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AND OTHERWISE.
  - b. **Disclaimers regarding Technology.** Customer acknowledges that accessing data online involves risks of unavailability of information and Customer assumes such risks. Customer has sole responsibility for obtaining, maintaining and securing its connections to the Internet. PES makes no representations to Customer regarding the reliability, performance or security of any network or provider. PES cannot control the flow of data to or from its network and other portions of the internet as such flow depends, in large part, on the performance of internet service providers or third parties. At times, actions or inactions of such third parties may impair or disrupt Customer's connections to the internet (or portions thereof). Accordingly, PES disclaims any and all liability resulting from or related in any way to any unavailability of a PES App, including as a result of Scheduled Downtime or a Permitted Exclusion, and Customer acknowledges that its sole remedies in any such event are as set forth in Section 5(b). For these reasons, Customer further agrees to instruct its Users and all medical personnel to have hard copies of Customer's Protocols and the PES Materials or other backup options immediately available at all times in case access to the PES Apps is interrupted or otherwise becomes unavailable.
  - c. **Disclaimers regarding Clinical Content.**
    - i. PES makes no representations or warranties with respect to the clinical content contained in the PES Offerings and in the Customized Offerings approved by Customer.
    - ii. Clinical guidelines and related clinical content contained in the PES Offerings must be approved by Customer pursuant to the Customization process prior to use in connection with patient care. Customer shall have an ongoing obligation to monitor and update the Customized Offerings to ensure consistency with Customer's Protocols, as Customer's Protocols may evolve over time. Customer shall submit a written request to PES for prompt revision and updating of the Customized Offerings when Customer or its medical staff, employees and/or contractors make modifications to Customer's Protocols.
    - iii. Customer hereby acknowledges that the Customized Offerings are not a substitute for the judgment of licensed medical professionals. The Customized Offerings are tools that may assist medical professionals in the delivery of care to patients. All medical judgments are reserved to licensed clinicians. Failure to render care consistent with recognized standards of care may result in injury to the patient.
    - iv. Customer must determine for itself whether the PES Offerings will meet its needs, and PES makes no representations or warranties in that regard.
- 10. CONFIDENTIALITY.**
- a. **Confidential Information.** For purposes of this Agreement, the term "Confidential Information" means: (i) any non-public information of PES or Customer including, without limitation, information regarding the PES Offerings, information relating to current and planned products and services of PES and its technology, techniques, know-how, research, engineering, designs, finances, accounts, procurement requirements, manufacturing, customer lists, business forecasts and marketing plans; (ii) PES's security controls, policies, procedures, audits, or other information concerning PES's internal security posture; (iii) patient information obtained by Customer; (iv) any other information of a party that is disclosed in writing and is conspicuously designated as "Confidential" at the time of disclosure or that is disclosed orally and is identified as "Confidential" at the time of disclosure; and (v) this Agreement, including the Quote. Notwithstanding the foregoing, Confidential Information does not include information that: (A) is in the other party's possession at the time of disclosure; (B) is independently developed without use of or reference to Confidential Information; (C) becomes known publicly, before or after disclosure, other than as a result of a party's improper action or inaction; (D) is approved for release in writing by the disclosing party; or (E) is required to be disclosed by law.
  - b. **Nondisclosure.** The parties shall not use Confidential Information for any purpose other than to fulfill their respective obligations under this Agreement. Each party: (i) shall ensure that its employees or contractors are bound by confidentiality obligations no less restrictive than those contained herein; and (ii) shall not disclose Confidential Information to any third party without prior written consent from the disclosing party. Without

limiting the generality of the foregoing, the receiving party shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. A receiving party shall promptly notify the disclosing party of any misuse or misappropriation of Confidential Information of which it becomes aware.

- c. **Injunction.** Customer agrees that breach of this Section would cause PES irreparable injury, for which monetary damages would not provide adequate compensation. In such instance, PES will be entitled to injunctive relief against such breach or threatened breach, without PES proving actual damages or posting a bond or other security, provided that if a judge determines that a bond is required, the parties agree that One Thousand Dollars (\$1,000) shall be a reasonable bond.
- d. **Open Records Laws and other Disclosure Requests.** PES acknowledges that Customer may be required to disclose certain Confidential Information if mandated by court order or, in the case of a Customer that is a governmental entity, pursuant to applicable open records laws or lawful public records requests. At such time as Customer becomes aware that it may be required to disclose Confidential Information, it agrees to (i) provide PES with prompt written notice in order to allow PES to protect its Confidential Information, object to the disclosure, and/or to seek a protective order, and (ii) cooperate with PES in such efforts. In addition to the obligations of this Section with respect to Confidential Information generally, Customer agrees to provide additional protection to PES source code information pursuant to Section 10(e) below.
- e. **Source Code.** THE SOURCE CODE FOR THE PES APPS SHALL BE CONSIDERED HIGHLY CONFIDENTIAL INFORMATION UNDER THIS AGREEMENT AND MAY NOT, UNDER ANY CIRCUMSTANCE, BE DISCLOSED BY CUSTOMER TO ANY THIRD PARTY EXCEPT PURSUANT TO A VALID COURT ORDER.
- f. **Return of Confidential Information.** Immediately upon termination of this Agreement or upon request, each party agrees to promptly return all Confidential Information and copies thereof belonging to the other party. If Customer is a governmental entity and required to retain certain Confidential Information after termination of this Agreement, then Customer shall retain only that portion of the Confidential Information that it is strictly required to retain under applicable law, return all other information to PES, and execute a reasonable non-disclosure agreement in connection with the retained Confidential Information.

## 11. INFRINGEMENT.

- a. **IP Infringement.** PES shall defend and indemnify Customer from any damages, costs, liabilities, expenses (including reasonable and actual attorney's fees) actually incurred or finally adjudicated as to any third party claim or action alleging that the PES Apps infringe or misappropriate any third party's patent, copyright, trade secret or other intellectual property rights enforceable in the applicable jurisdiction (each a "Claim").
- b. **IP Remedies.** If any PES Offering becomes, or in PES's opinion is likely to become, the subject of an infringement or misappropriation claim, PES may, at its option and expense, either (i) procure for Customer the right to continue using such PES Offering; (ii) replace or modify the PES Offering so that it becomes non-infringing; or (iii) terminate Customer's right to use the PES Offering and issue Customer a refund for any Fees for periods after such termination. Notwithstanding the foregoing, PES will have no obligation or otherwise with respect to any infringement or misappropriation claim based upon: (A) any use of the PES Apps not in accordance with this Agreement or for purposes not intended by PES; (B) any use of the PES Offerings in combination with other products, equipment, software, or data not supplied or authorized by PES, (C) any use of any release of the PES Apps other than the most current release made available to Customer at no additional charge; or (D) any modification of a PES Offering made by any person other than PES or an authorized representative or agent thereof. In any such case Customer will defend PES from any such claim against PES.
- c. **Sole IP Liability.** This Section is PES's sole obligation and liability, and Customer's sole remedy, for potential or actual intellectual property infringement relating to the PES Offerings.
- d. **Procedures.** The party seeking indemnification (the "Indemnified Party") must give prompt written notice of such Claim to the other party (the "Indemnifying Party"), accompanied by copies of any written documentation regarding the Claim received by the Indemnified Party. The Indemnifying Party shall compromise or defend, at its own expense and with its own counsel, any such Claim. The Indemnified Party will have the

right, at its option, to participate in the settlement or defense of any such Claim, with its own counsel and at its own expense; provided, however, that the Indemnifying Party will have the right to control such settlement or defense. The Indemnifying Party will not enter into any settlement that imposes any liability or obligation on the Indemnified Party without the Indemnified Party's prior written consent. The parties will cooperate in any settlement or defense and give each other full access to all relevant information, at the Indemnifying Party's expense.

- 12. **GOVERNMENT REGULATIONS.** Each party agrees to comply with all applicable import, export and anti-corruption statutes and regulations of the United States in connection with the manufacture, sale and distribution of the PES Offerings including, without limitation, the Foreign Corrupt Practices Act. Each party agrees to indemnify and hold harmless the other from all claims, demands, damages, costs, fines, penalties, attorneys' fees and all other expenses arising from a party's failure to comply with this Section and/or applicable laws, rules and/or regulations governing the PES Offerings.

## 13. LIMITATION OF LIABILITY.

- a. **LIMITATION OF DAMAGES.** UNDER NO CIRCUMSTANCES SHALL PES OR CUSTOMER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, INCLUDING CLAIMS FOR DAMAGES FOR LOST PROFITS, GOODWILL, USE OF MONEY, INTERRUPTED OR IMPAIRED USE OF THE PES OFFERINGS, AVAILABILITY OF DATA, STOPPAGE OF WORK, OR IMPAIRMENT OF OTHER ASSETS.
- b. **LIMITATION OF LIABILITY.** PES'S MAXIMUM LIABILITY FOR ALL CLAIMS OF LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED FIVE (5) TIMES THE FEES PAID BY OR ON BEHALF OF CUSTOMER IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE APPLICABLE CLAIM.
- c. **Insurance.** Each party shall be responsible to carry insurance in appropriate amounts to cover the activities conducted by it under this Agreement. Upon written request, PES agrees to provide Customer with evidence of its insurance coverages.

## 14. DISPUTE RESOLUTION.

- a. **Limitation of Action.** Except for claims arising from Customer's non-payment or underpayment of amounts owed to PES, any and all claims arising out of or related to this Agreement shall be barred, unless instituted either (i) **within two (2) years** from the date that the complaining party knew or should have known of the facts giving rise to a claim, or (ii) the applicable Florida statute of limitations, whichever is shorter.
- b. **Governing Law.** This Agreement and any claim or controversy arising hereunder (whether in contract, tort, or otherwise, including statutory, consumer protection, or common law) shall be governed by the laws of the State of Florida, without regard to conflicts of law. The UN Convention for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply. In any dispute, each party will bear its own attorneys' fees and costs.
- c. **Mediation.** In the event of any dispute, claim or disagreement arising out of or relating to this Agreement, the parties shall first submit the dispute, claim or disagreement to non-binding mediation administered by the American Arbitration Association (the "AAA") in accordance with its Commercial Mediation Procedures. The place of mediation shall be Fort Lauderdale, Broward County, Florida. The mediation shall be conducted by one (1) mediator selected in accordance with AAA rules, unless the parties otherwise mutually agree to a panel of three (3) mediators.
- d. **Binding Arbitration.** If the dispute, claim or disagreement is not resolved within sixty (60) days after the initial mediation meeting, then either party may submit the dispute, claim or disagreement to binding arbitration administered by the AAA in accordance with the provisions of its Commercial Arbitration Rules and, except as provided in Section 14(e) below, such arbitration shall be the sole means of dispute resolution. The place of arbitration shall be Fort Lauderdale, Broward County, Florida. The arbitration shall be conducted by one (1) arbitrator selected in accordance with the AAA rules, unless the parties otherwise mutually agree to a panel of three (3) arbitrators.
- e. **Injunction.** Notwithstanding anything in this Agreement to the contrary, each party shall be entitled to seek injunctive or other equitable relief without first submitting the matter to mediation or arbitration in accordance

with the provisions of this Section 14, even if a similar or related matter has already been referred to mediation or arbitration in accordance with the terms of this Section 14. Venue for any action permitted to be brought in court under this Section shall be the appropriate state and federal courts located in Fort Lauderdale, Broward County, Florida.

**15. SEVERABILITY.** If a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.

**16. NOTICE.** Notices provided under this Agreement must be in writing and delivered to PES's or Customer's principal place of business as forth in the Purchase Order and/or Quote by: (a) certified mail, return receipt requested; (b) hand delivery; (c) e-mail with a confirmed read receipt; or (d) reputable overnight carrier service. In the case of delivery by e-mail, the notice must be followed by a copy of the notice being delivered by a means provided in (a), (b) or (d). The notice will be deemed given on the day the notice is received by the party receiving such notice.

**17. DESIGN CHANGES.** Except as otherwise agreed expressly in writing, PES may at any time furnish improvements to a product's design and/or construction. PES may also furnish suitable substitutes for materials that are unobtainable because of priorities or regulations established by governmental authorities or the non-availability of products from suppliers.

**18. MISCELLANEOUS.**

a. Merger Clause. In entering into this Agreement, neither party is relying upon any representations or statements of the other that are not fully expressed herein or therein; rather each party is relying on its own judgment and due diligence and expressly disclaims reliance upon any representations or statement not expressly set forth in this Agreement. In the event Customer issues User instructions, internal memoranda, or any other document addressing any of the PES Offerings, it is hereby specifically agreed and understood that such writing is for the Customer's internal purposes only, and that any terms, provisions, and conditions contained therein shall in no way modify this Agreement.

b. Assignment & Successors. Neither party may assign, subcontract, delegate or otherwise transfer this Agreement or any of its rights or obligations hereunder, nor may it contract with third parties to perform any of its obligations hereunder except as contemplated in this Agreement, without the other party's prior written consent, except that either party may, without the prior consent of the other, assign all its rights under this Agreement to (i) a purchaser of all or substantially all of its assets, or (ii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which either party is participating (collectively, a "Change in Control"); provided however, that the non-assigning party is given notice of the Change in Control and the assignee is not a competitor of the non-assigning party hereunder.

c. Force Majeure. No delay, failure, or default, other than a failure to pay Fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control (collectively, "Force Majeure"). In such event, however, the delayed party must promptly provide the other party notice of the Force Majeure. The delayed party's time for performance will be excused for the duration of the Force Majeure, but if the Force Majeure event lasts longer than thirty (30) days, the other party may immediately terminate any unfulfilled Purchase Order.

d. Waiver & Breach. Neither party will be deemed to have waived any of its rights under this Agreement, unless it is an explicit written waiver made by an authorized representative. No waiver of a breach will constitute a waiver of any other breach.

e. Survival of Terms. Unless otherwise stated, all of PES's and Customer's respective obligations, representations and warranties under this Agreement which are not, by the express their terms, fully to be performed during the Term shall survive the termination of this Agreement. Without limiting the foregoing, the provisions of Terms and Conditions Sections 2(d), 6, 9, 10, 13, and 14 shall survive any termination of this Agreement.

f. Authority. An individual executing or delivering a Quote or a Purchase Order hereunder acknowledges that he or she has the authority to act on behalf of the Customer or PES, as the case may be, and bind such party to the terms hereof.

g. Signatures. Electronic signatures on any portion of this Agreement (or copies of signatures sent via electronic means) are the equivalent of handwritten signatures and are fully enforceable.