



RALPH M. TERRAZAS  
FIRE CHIEF

April 27, 2021

BOARD OF FIRE COMMISSIONERS  
FILE NO. 21-053

TO: Board of Fire Commissioners

FROM: *RMT* Ralph M. Terrazas, Fire Chief

SUBJECT: AGREEMENT WITH PULSEPOINT FOUNDATION FOR SOFTWARE-  
AS-A-SERVICE APPLICATION

FINAL ACTION:	<input type="checkbox"/> Approved	<input type="checkbox"/> Approved w/Corrections	<input type="checkbox"/> Withdrawn
	<input type="checkbox"/> Denied	<input type="checkbox"/> Received & Filed	<input type="checkbox"/> Other

## SUMMARY

The Fire Department (LAFD) is responsible for providing emergency response services, specifically Fire Suppression and Emergency Medical Services (EMS) to the public. The PulsePoint Foundation offers a Software-As-A-Service (SAAS) application for mobile devices that enables its subscribers to be notified of the LAFD's EMS incidents involving persons suffering from sudden cardiac arrest (SCA) distress within a specified proximity of the location of the incident. SCA is a leading cause of death in the United States, and accounts for an estimated 325,000 deaths each year.

Subscribers to the PulsePoint application who receive SCA alerts of the location of an incident can choose to respond to the incident to render cardiopulmonary resuscitation and other appropriate assistance prior to the arrival of LAFD's EMS personnel. The application also provides subscribers with a location indicator for LAFD fire emergencies that are visible by the general public. Additionally, directions to the nearest Automatic External Defibrillator are also provided. To date, over 100,000 City users have subscribed to the application.

The contract term is for one year, from January 1, 2021 through December 31, 2021, with two (2) one-year options to extend the Agreement. The annual licensing fee for a one-year term is \$28,000.

The City Attorney has reviewed and approved the Agreement as to legal form.

## **RECOMMENDATIONS**

That the Board:

1. Approve and authorize the Fire Chief to execute the Agreement with PulsePoint Foundation for the Software-as-a-Service application for a one-year term, from January 1, 2021 through December 31, 2021, for a maximum compensation not to exceed \$28,000.
2. Authorize the Fire Chief sole discretion to execute amendments to extend the term of the Agreement for up to two additional years, exercisable in one-year increments, and to execute amendments regarding any modifications, additions or exclusions during the term of the Agreement, contingent on the availability of funds and the contractor having provided satisfactory services under the Agreement, and subject to review and approval by the City Attorney.
3. Transmit the Agreement to the Mayor for approval in accordance with Executive Directive No. 3.

## **FISCAL IMPACT**

There is no impact to the General Fund. Funding for this Agreement is available in the Department's Targeted Destination Ambulance Services (Kaiser) Fund, Fund No. 44R, Account 3844RA.

Board report prepared by Scott Porter, Chief Information Officer, Information Technology Bureau.

Attachment

**AGREEMENT NO. \_\_\_\_\_**

**BETWEEN**

**THE CITY OF LOS ANGELES**

**AND**

**PULSEPOINT FOUNDATION**

**FOR**

**SOFTWARE-AS-A-SERVICE APPLICATION**

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**AGREEMENT NUMBER C-\_\_\_\_\_**  
**BETWEEN**  
**THE CITY OF LOS ANGELES**  
**AND**  
**PULSEPOINT FOUNDATION**  
**FOR**  
**SOFTWARE-AS-A-SERVICE APPLICATION**

**THIS AGREEMENT** (hereinafter referred to as "Agreement") is made and entered into by and between the City of Los Angeles, a municipal corporation (hereinafter referred to as "City"), acting by and through the Los Angeles Fire Department (hereinafter referred to as "Department" or "LAFD"), and PulsePoint Foundation (hereinafter referred to as "Contractor"), with reference to the following:

**WHEREAS**, the LAFD is responsible for providing Emergency Response Services, specifically Fire Suppression and Emergency Medical Services ("EMS") to the public; and

**WHEREAS**, the LAFD employs various methods to ensure prompt Fire Protection and EMS services, including awareness to the public; and

**WHEREAS**, the Contractor offers a Software-As-A-Service ("SAAS") 9-1-1 connected application for location-aware mobile devices that enables cardiopulmonary resuscitation ("CPR") trained subscribers to be notified of EMS incidents involving persons suffering from sudden cardiac arrest ("SCA") distress within a specified proximity of the location of the SCA incident upon notification from the LAFD; and

**WHEREAS**, the Contractor's SAAS application contains a location-based service that provides its subscribers with a location indicator for LAFD fire emergencies (non-medical) that are visible by the general public; and

**WHEREAS**, the SAAS subscribers who receive SCA alerts will be informed of the SCA incidents, and can choose to respond to those incidents to render CPR and other appropriate assistance prior to the arrival of the LAFD's EMS personnel; and

**WHEREAS**, the Contractor's SAAS application will also provide subscribers with directions to the nearest Automatic External Defibrillator ("AED"); and

**WHEREAS**, SCA is a leading cause of death in the United States and accounts for an estimated 325,000 deaths each year; and

**WHEREAS**, the American Heart Association estimates that effective bystander CPR can significantly improve a person's chance of survival after receiving immediate care and attention; and

**WHEREAS**, LAFD will continue with its normal operations and dispatch its Fire Suppression and EMS resources to all incidents simultaneously with Contractor's notification application; and

**WHEREAS**, the Contractor's SAAS application enables subscribers in the community to provide potentially life-saving assistance to SCA victims prior to the arrival of LAFD's EMS resources; and

**WHEREAS**, pursuant to City Charter Section 371(e)(10), the competitive bidding process is considered to be undesirable and impractical because of the proprietary and unique nature of the SAAS technology application; and

**WHEREAS**, the services to be provided under this Agreement does not require a Charter Section 1022 evaluation because the product source is proprietary and not available to third parties; and

**WHEREAS**, the City desires to enter into an Agreement with the Contractor for a period of one (1) year, beginning on January 1, 2021, and ending on December 31, 2021, not to exceed \$28,000, with two (2) one-year optional extensions, subject to the availability of funds.

**NOW, THEREFORE**, in consideration of the premises, representations, covenants and agreements provided below, the parties agree as follows:

## **1.0 PARTIES TO THE AGREEMENT AND REPRESENTATIVES**

### **1.1 Parties to the Agreement**

- 1.1.1 City – The City of Los Angeles, a municipal corporation, acting by and through the Los Angeles Fire Department, having its principal office at 200 North Main Street, 18<sup>th</sup> Floor, Los Angeles, California, 90012.
- 1.1.2 Contractor – PulsePoint Foundation, having its principal address at P.O. Box 12594, Pleasanton, California, 94588.

### **1.2 Representatives of the Parties and Service of Notices**

The representatives of the respective parties who are authorized to administer this Agreement and to whom formal notices, demands, and communications will be given are as follows:

- 1.2.1 The City's representative is, unless otherwise stated in the Agreement:

Ralph M. Terrazas, Fire Chief

Los Angeles Fire Department  
200 N. Main St., Room 1800  
Los Angeles, CA 90012

With copies to:

Scott Porter, Chief Information Officer  
Los Angeles Fire Department  
200 N. Main St., Room 1660  
Los Angeles, CA 90012

- 1.2.2 The Contractor's representative is, unless otherwise stated in the Agreement:

Richard Price  
PulsePoint Foundation  
P.O. Box 12594  
Pleasanton, CA 94588

- 1.3 Formal notices, demands and communications to be given hereunder by either party must be made in writing and may be effected by personal delivery or by registered or certified mail, postage prepaid, return receipt requested and shall be deemed communicated as of the date of mailing.

- 1.4 If the name of the person designated to receive the notices, demands or communications or the address of such person is changed, written notice must be provided as described in this Agreement, within five (5) working days of said change.

## **2.0 TERM OF THE AGREEMENT**

### **2.1 Term**

Upon signatures by all parties and attestation by the City Clerk, this Agreement shall be for a term of one (1) year, effective from January 1, 2021 through December 31, 2021, unless otherwise terminated by the City as provided for in this Agreement.

### **2.2 Amendments**

The Board of Fire Commissioners has authorized the Fire Chief to extend the Agreement for a total of two (2) additional years, exercisable in one (1) year increments, utilizing the amendment process described in Section PSC 5 of Exhibit A – Standard Provisions for City Contracts (rev. 10/17)[v.3], attached hereto and incorporated by reference herein. Any amendments to extend the term of this Agreement are contingent on

availability of funds and the Contractor having provided satisfactory services under this Agreement.

## 2.3 Ratification

To the extent that the Contractor may have provided services prior to the execution of this Agreement at the City's request and due to immediate needs, the City hereby ratifies and accepts those services performed in accordance with the terms and conditions of this Agreement.

## 3.0 SERVICES TO BE PROVIDED BY THE CONTRACTOR

The Scope of Services is defined in the Contractor's Standard Subscription Terms and Conditions, attached hereto and incorporated herein as Exhibit B. However, both Parties agree that emergency 9-1-1 calls received by the LAFD communications center will be identified and coded by the type of incident, and that the LAFD notifications to the Contractor shall be done at the same time LAFD's Fire Suppression and EMS resources are dispatched to the incident.

### 3.1 Contractor shall:

- 3.1.1 Upon receipt of an LAFD SCA incident occurring in a public location, transmit the SCA notification alert to its subscribers through the location services embedded in the subscribers' mobile device, and the alert shall only contain: a) the subscriber's present location; b) the victim's reported location, but only public locations, and no private locations shall be disclosed; and c) the nearest AED location, if known.
- 3.1.2 Upon receipt of an LAFD fire emergency (non-medical) incident location, transmit the fire emergency notification alert to its subscribers through the location services embedded in the subscribers' mobile device only those fire emergencies that are visible by the general public.
- 3.1.3 Not transmit all other LAFD EMS incident location notification alerts, with the exception of the SCA notification alerts as described in sub-section 3.1.1. above.
- 3.1.4 Disable the audio feature of the SAAS for all LAFD notification alerts.



## 4.0 COMPENSATION AND METHOD OF PAYMENT

### 4.1 Compensation

The total compensation amount to Contractor shall not exceed Twenty-eight Thousand Dollars (\$28,000) for any one year, unless it is amended in writing and agreed to by the parties. Payment shall be made on an annual basis as indicated in Exhibit C, attached hereto and incorporated by reference herein.

Contractor shall not charge the LAFD a cost higher than any other public entity paying a lower rate for the same level of services, including discounts.

### 4.2 Method of Payment

#### 4.2.1 Invoices

The Contractor shall submit an annual invoice to:

Scott Porter, Chief Information Officer  
Los Angeles Fire Department  
200 N. Main St., Room 1660  
Los Angeles, CA 90012

The Contractor must include the following information, and any other documentation requested by the City, on each invoice:

1. Name and address of Contractor;
2. Name and address of the Fire Department;
3. Date of the invoice and period covered;
4. Reference to the contract number;
5. Description of the completed task and the number of hours used for each task (if applicable);
6. Payment terms, total due, and the due date;
7. Certification by the Contractor;
8. Discounts and terms (if applicable); and
9. Remittance address (if different from the billing address).

- 4.2.2 The City will make payment to the Contractor for the services performed after receipt and approval of the invoices by the City's Representative. The City will not unreasonably withhold approval of invoices. In the event any invoice is not approved, the City's Representative will immediately send a notice to the Contractor setting forth therein the reason(s) said invoice was not approved. Upon receipt of such notice, the Contractor may re-invoice the

City for the accepted portion of the invoice or cure the defect identified in the City Representative's notice. The City will pay the revised invoice as soon as practical after its submission. If the City's Representative contests all or a portion of the invoice, the City's Representative and the Contractor will use their best efforts to resolve the disputed portion or portions of the invoice.

- 4.2.3 Failure to adhere to these policies may result in nonpayment or non-approval of demands, pursuant to Charter Section 262(a), which requires the Controller to inspect the quality, quantity, and condition of services, labor, materials, supplies, or equipment received by any City office or department, and approve demands before they are drawn on the Treasury.

## **5.0 DATA MANAGEMENT, SECURITY, AND PRIVACY**

### **5.1 Data Ownership**

As between the parties, City is the sole and exclusive owner of all data and information provided to Contractor by or on behalf of City pursuant to this Agreement and any and all updates or modifications thereto or derivatives thereof made by Contractor ("City Data"), and all intellectual property rights in the foregoing, whether or not provided to any other party under this Agreement.

City Data is Confidential Information for the purposes of this Agreement. Contractor shall not use City Data for any purpose other than that of rendering the services under this Agreement, nor sell, assign, lease, dispose of or otherwise exploit City Data. Contractor shall not possess or assert any lien or other right against or to City Data. City may request an export of City Data stored within the systems or held by Contractor in any form or format at no charge to City.

Subject to the restrictions articulated elsewhere in this Agreement, City grants Contractor a non-transferable, non-exclusive, terminable at-will license, solely for the term of this Agreement, to use City Data solely for purposes of performing the services pursuant to this Agreement for City's benefit.

### **5.2 Data Protection in General**

The protection of personal privacy and personally identifiable data shall be an integral part of the business activities of Contractor, and Contractor shall use all reasonable efforts to prevent inappropriate or unauthorized use of City Data at any time and safeguard the confidentiality, integrity, and availability of City Data and comply with the following conditions:

- 5.2.1 Contractor shall implement and maintain appropriate administrative, technical and organizational security measures in order to safeguard against unauthorized access, disclosure, destruction, or theft of City Data. Contractor shall protect City Data using no less than the security means and technology necessary to meet the standard of care relevant to the data at issue. Such security measures shall also be in accordance with recognized industry best practices and the standard of care imposed by state and federal laws and regulations relating to the protection of such information.
- 5.2.2 Unless otherwise stipulated in writing, Contractor shall encrypt all City Data at rest and in transit with controlled access. The Contractor shall apply and support encryption in solutions that are certified against U.S. Federal Information and Processing Standard 140-2, Level 2, or equivalent industry standard, and verify that the encryption keys and keying material are not stored with any associated data. Whenever and wherever applicable, Contractor shall apply and support industry standards or better for tokenization, fraud-use protection, format-preserving encryption, and data encryption technology.
- 5.2.3 At no time shall any City Data be copied, disclosed, or retained by Contractor or any party related to Contractor, including its subcontractors, for use in any process, publication, or transaction that is not specifically authorized by Section 3.0 of this Agreement or by the City in writing.
- 5.2.4 Contractor shall secure and protect all City Data from hacking, viruses, ransomware, and denial of service and related attacks.

### 5.3 Development and Access

Contractor shall provide its services to the City and its end users solely from data centers in the continental United States of America. Storage of City Data at rest shall be located in the continental United States of America. Contractor shall not allow its personnel or subcontractors to store City Data on portable devices, including personal computers, except for devices that are used and kept only at Contractor's continental United States of America headquarters or data centers. Contractor may permit its personnel and subcontractors to access City Data remotely from locations within the continental United States of America only as required to provide contracted services. Contractor shall neither access nor allow a third-party access to City Data from any location outside of the continental United States of America. Contractor shall not provide any services under this

Agreement from a location outside of the continental United States of America, absent receipt of City's express written approval.

#### 5.3.1 Access Limitations

Contractor shall use precautions, including, but not limited to, physical software and network security measures, personnel screening, training and supervision, and appropriate agreements to:

- 5.3.1.1 Prevent anyone other than City, authorized Contractor personnel, and subcontractors with a specific need to know, for a purpose authorized under this Agreement, from monitoring, using, or gaining access to City Data;
- 5.3.1.2 Protect copies of City Data from loss, corruption, or unauthorized alteration; and
- 5.3.1.3 Prevent the disclosure of City and Contractor usernames, passwords, API keys, and other access control information to anyone other than authorized City and Contractor personnel.

#### 5.3.2 Security Best Practices

Contractor shall implement the following security best practices with respect to City Data and to any service provided:

- 5.3.2.1 **Least Privilege**  
Contractor shall authorize access only to an employee or subcontractor for only the minimum amount of resources required for that function.
- 5.3.2.2 **Separation of Duties**  
Contractor shall divide functions among its staff members to reduce the risk of one person committing fraud undetected.
- 5.3.2.3 **Role-Based Security**  
Contractor shall restrict access to authorized users and base access control on the role a user plays in the Contractor's organization.

#### 5.3.3 Credential Restrictions

Contractor shall restrict the use of, and access to, administrative credentials for accounts and system services accessing City Data, to only those of Contractor's personnel and subcontractors whose

access is essential for the purpose of providing the contracted services or performing obligations under this Agreement. Contractor shall require personnel and subcontractors to log on using an assigned user-name and password when administering City accounts or accessing City Data. These controls must enable Contractor to promptly revoke or change access in response to terminations or changes in job functions, as applicable. Contractor shall encrypt all passwords, passphrases, and PINs, using solutions that are certified against U.S. Federal Information and Processing Standard 140-2, Level 2, or equivalent industry standard, and verify that the encryption keys and keying material are not stored with any associated data. Contractor shall implement any City request to revoke or modify user access within twenty-four hours or the next business day of receipt of City's request. Contractor shall disable user accounts after at most 10 consecutive invalid authentication attempts.

#### 5.3.4 Physical and Environmental Security

Contractor facilities that process City Data must provide a physically secure environment from unauthorized access, damage, and interference.

### 5.4 System Administration and Network Security

#### 5.4.1 Operational Controls

Contractor shall implement operational procedures and controls designed to ensure that technology and information systems are configured and maintained according to prescribed internal standards and consistent with applicable Industry Standard Safeguards. Examples of Industry Standard Safeguards are ISO/IEC 27002:2005, NIST 800-44, Microsoft Security Hardening Guidelines, OWASP Guide to Building Secure Web Applications, SOC 2 Type 2, and the various Center for Internet Security Standards. Moreover, Contractor shall use application security and software development controls designed to eliminate and minimize the introduction of security vulnerabilities.

#### 5.4.2 Antivirus

Contractor shall have and maintain antivirus protection configured to automatically search for and download updates (daily, at a minimum) and perform continuous virus scans. Malware and threat detection must be updated continuously, and software patches provided by vendors must be downloaded and implemented in a

timely manner. If Contractor is unable to implement these controls in a timely manner, Contractor shall notify City in writing.

#### 5.4.3 Vulnerability Management and Patching

Contractor shall employ vulnerability management and regular application, operating system, and other infrastructure patching procedures and technologies designed to identify, assess, mitigate, and protect against new and existing security vulnerabilities and threats, including viruses, bots, and other malicious code.

#### 5.4.4 Network Controls

Contractor shall have, shall implement, and shall maintain network security controls, including the use of firewalls, layered DMZs and updated intrusion detection and prevention systems, reasonably designed to protect systems from intrusion or limit the scope or success of any attack or attempt at unauthorized access to City Data.

#### 5.4.5 Logging and Monitoring

Unless prohibited by applicable law, Contractor shall, and shall require subcontractors to, continuously monitor its networks and personnel for malicious activity and other activity that may cause damage or vulnerability to City Data. Contractor shall maintain logs of administrator and operator activity and data recovery events related to City Data.

#### 5.4.6 Changes in Service

Contractor shall notify the City of any changes, enhancement, and upgrades to the System Administration and Network Security, or changes in other related services, policies, and procedures, as applicable, which can adversely impact the security of City Data.

### 5.5 Policies, Assessments, and Audits

#### 5.5.1 Policies

Contractor shall, and shall require subcontractors to, establish and maintain a formal, documented, mandated, company-wide information security program, including security policies, standards, and procedures (collectively "Information Security Policy"), and communicate the Information Security Policy to all of its respective personnel in a relevant, accessible, and understandable form.

Contractor shall regularly review and evaluate the Information Security Policy to ensure its operational effectiveness, compliance with all applicable laws and regulations, and to address new threats and risks. Upon execution of this Agreement and thereafter within three (3) days of City's request, Contractor shall make available for review by the City Contractor's Information Security Policy and any related SOC audits or other evidence that Contractor has in place appropriate policies and procedures regarding information protection and security.

#### 5.5.2 Vulnerability and Risk Assessments

At least annually, Contractor shall perform vulnerability tests and assessments of all systems that contain City Data. For any of Contractor's applications that process City Data, such testing must also include penetration tests using intercept proxies to identify security vulnerabilities that cannot be discovered using automated tools, and code review or other manual verifications to occur at least annually.

Contractor recognizes and agrees that work performed under this Agreement may be subject to City's vulnerability disclosure program. Contractor shall work with City in good faith to mitigate any vulnerabilities discovered as part of any City vulnerability disclosure program. Contractor shall perform such mitigation within the timeline required pursuant to the vulnerability disclosure program and at no additional cost to City. Contractor shall further hold harmless any security researcher identified by City that alerts City to vulnerabilities in accordance with the process and requirements of City's vulnerability disclosure program.

#### 5.5.3 Right of Audits by City/Security Review Rights

City and its agents, auditors (internal and external), regulators, and other representatives as City may designate, may inspect, examine, and review the facilities, books, systems, records, data, practices, and procedures of Contractor (and any personnel and subcontractors that Contractor may use) that are used in rendering services to City to verify the integrity of City Confidential Information and to monitor compliance with the confidentiality and security requirements for City Confidential Information. In lieu of an on-site audit, at City's discretion and upon request by the City, the Contractor agrees to complete, within fourteen (14) days of receipt, an audit questionnaire provided by the City regarding the Contractor's data privacy and information security program.

Contractor shall comply with all recommendations that result from such inspections, test, and audits within reasonable timeframes.

## 5.6 Data Backup and Emergency Recovery

Contractor shall employ a multilayered approach to backups and disaster recovery, including the use of a primary data center and a backup data center. Contractor shall perform both local and remote backups of the complete server infrastructure, including server operating systems, applications, and data. Contractor shall perform Disaster Recovery Tests no less than semi-annually. Contractor shall maintain and comply with a reasonable written plan (the “DR Plan”) setting forth procedures for (a) mitigating disruption to systems during and after an earthquake, hurricane, other natural disaster, war, act of terrorism, act of cyberterrorism, and other natural or man-made disaster, including without limitation Force Majeure Events (as that term is used in PSC-6, Excusable Delays, of the Standard Provisions for City Contracts (Rev. 10/17)[v.3] (collectively, a “Disaster”); and (b) restoring Service functionality promptly after a Disaster. The DR Plan will include procedures no less protective than industry standard, and Contractor shall update the DR Plan as the industry standard changes.

## 5.7 Data Return and Destruction

- 5.7.1 At the conclusion of the Agreement and as instructed by City, Contractor shall (at its sole cost) return, delete, or destroy City Data then in its possession or under its control including, without limitation, originals, and copies of such City data. The following types of information are excluded from this requirement: (i) City Data that becomes a part of the public domain, including through court filings; and (ii) City Data that Contractor is required to maintain, by law, regulations, or by the terms of this Agreement, but only for the time period required. For the avoidance of doubt, anything that is stored on routine backup media solely for the purpose of disaster recovery will be subject to destruction in due course rather than immediate return or destruction pursuant to this paragraph, provided that Contractor and Contractor’s employees and contractors are precluded from accessing such information in the ordinary course of business prior to destruction.
- 5.7.2 Contractor shall implement and utilize appropriate methods to ensure the destruction of City Data. Such methods shall be in accordance with recognized industry best practices and shall leave no data recoverable on Contractor’s computers or other media.
- 5.7.3 Contractor agrees to certify that City Data has been returned, deleted, or destroyed from its systems, servers, off-site storage



facilities, office locations, and any other location where Contractor maintains City Data within 45 days of receiving City's request that the information be returned, deleted, or destroyed. Contractor shall document its verification of data removal, including tracking of all media requiring cleaning, purging or destruction.

## 5.8 Data Breach

Contractor shall notify City in writing as soon as reasonably feasible, but in any event within forty-eight hours of Contractor's discovery or reasonable belief of any unauthorized access, loss, transmission, alteration, or destruction of City Data (a "Data Breach"), or of any event that compromises the integrity, confidentiality or availability of City Data (a "Security Incident"), including, but not limited to, denial of service attack, ransomware attack, and system outage, instability or degradation due to computer malware or virus. Contractor shall begin remediation immediately. Contractor shall provide daily updates if requested by City, and, in any event, reasonably frequent updates, regarding findings and actions performed by Contractor until the Data Breach or Security Incident has been resolved to City's satisfaction. Contractor shall conduct an investigation of the Data Breach or Security Incident and shall share a report of the investigation findings with City. At City's sole discretion, City and/or its authorized agents shall have the right to conduct an independent investigation of a Data Breach. Contractor shall cooperate fully with City and its agents in that investigation. If the City is subject to liability for any Data Breach or Security Incident, the Contractor shall fully indemnify and hold harmless the City and defend against any resulting actions.

## 5.9 Confidentiality

### 5.9.1 City's Confidential Information

For purposes of this Section 5.9, "Confidential Information" means any nonpublic information whether disclosed orally or in written or digital media, received by Contractor that is either marked as "Confidential" or "Proprietary" or which the Contractor knows or should have known is confidential or proprietary information. City Data shall be treated as Confidential Information by Contractor under this Agreement, even if such data is not marked "Confidential" or "Proprietary" or was obtained by or transferred to Contractor prior to the effective date of this Agreement.

### 5.9.2 Protection of Confidential Information

Except as expressly authorized herein, Contractor shall (a) hold in confidence and not disclose any Confidential Information to third parties and (b) not use Confidential Information for any purpose

other than fulfilling its obligations and exercising its rights under this Agreement or performing the contracted services. Contractor shall limit access to Confidential Information to Contractor personnel and subcontractors that are previously disclosed to City and, (1) who have a need to know such information for the purpose of Contractor performing its obligations or exercising its rights under this Agreement, or performing Contracted Services; (2) who have confidentiality obligations no less restrictive than those set forth herein; and (3) who have been informed of the confidential nature of such information. In addition, the Contractor shall protect Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At LAFD's request or upon termination or expiration of this Agreement, the Contractor shall return to LAFD any Deliverables not provided to the City and Contractor shall destroy (or permanently erase in the case of electronic files) all copies of Confidential Information, and Contractor shall, upon request, certify to City its compliance with this sentence.

#### 5.9.3 Exceptions

The confidentiality obligations set forth in Section 5.9 shall not apply to any Confidential Information that (a) is at the time of disclosure or becomes generally available to the public through no fault of the Contractor; (b) is lawfully provided to the Contractor by a third party free of any confidentiality duties or obligations; (c) was already known to the Contractor at the time of disclosure free of any confidentiality duties or obligations; or (d) the Contractor can demonstrate was independently developed by personnel of the Contractor without reference to the Confidential Information. In addition, the Contractor may disclose Confidential Information to the extent that such disclosure is necessary for the Contractor to enforce its rights under this Agreement or is required by law or by the order of a court or similar judicial or administrative body, provided that (to the extent legally permissible) the Contractor promptly notifies LAFD in writing of such required disclosure, cooperates with LAFD if LAFD seeks an appropriate protective order, and the Contractor discloses no more information that is legally required.

#### 5.10 Compliance with Privacy Laws

Contractor is responsible for ensuring that Contractor's performance of its obligations and exercise of its rights under this Agreement complies with all applicable local, state, and federal privacy laws and regulations, as

amended from time to time. If this Agreement or any practices which could be, or are, employed in performance of this Agreement become inconsistent with or fail to satisfy the requirements of any of these privacy laws and regulations, City and Contractor shall in good faith execute an amendment to this Agreement sufficient to comply with these laws and regulations and Contractor shall complete and deliver any documents necessary to show such compliance. The City acknowledges and agrees that Contractor is not responsible for giving any notices to or obtaining any consents from any other party in order for Contractor to process the City Data as contemplated by this Agreement.

## **6.0 REPRESENTATIONS AND WARRANTIES**

Contractor represents and warrants that:

### **6.1 Compliance with Law**

The services that the Contractor provides pursuant to this Agreement will comply with all applicable laws, including, without limitation, federal, state, and local.

### **6.2 Authority to Contract and No Pending Litigation**

The Contractor has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement.

### **6.3 Workmanlike Performance**

All professional services will be performed in a professional and workmanlike manner, according to at least prevalent industry standards, and performed by competent personnel.

## **7.0 MISCELLANEOUS**

### **7.1 Standard Provisions**

Contractor shall comply with the Standard Provisions for City Contracts (Rev. 10/17)[v.3], attached hereto as Exhibit A, and incorporated by reference as though fully set forth herein.

### **7.2 Disclosure of Border Wall Contracting Ordinance**

Contractor shall comply with Los Angeles Administrative Code ("LAAC") Section 10.50 et seq., "Disclosure of Border Wall Contracting Ordinance." City may terminate this Agreement at any time if City determines the

Contractor failed to fully and accurately complete the required affidavit and disclose all Border Wall Bids and Border Wall Contracts as defined in LAAC Section 10.50.1.

### 7.3 Publicity/Case Studies

Contractor shall refer all inquiries from the news media to City, shall immediately contact City to inform City of the inquiry, and shall comply with the procedures of City's Public Affairs staff regarding statements to the media relating to this Agreement or Contractor's services hereunder. Contractor shall not use City as a reference or case study absent receipt of City's prior written approval. Contractor shall further provide City with the opportunity to review and approve any such reference or case study prior to publication. In no event may Contractor use any City marks in conjunction with a reference or case study.

### 7.4 Non-Exclusive Agreement

The City and Contractor understand and agree that this is a non-exclusive Agreement to provide services to the City and the LAFD and that the City or the LAFD reserve the right to enter into an agreement with other contractors to provide similar services during the term of this Agreement.

### 7.5 Order of Precedence

This Agreement, and any exhibits, attachments or documents incorporated herein by inclusion or by reference, constitutes the complete and entire Agreement between the City and the Contractor. In the event of any inconsistency between the body of this Agreement and the Exhibits, the order of precedence will be as follows:

- 1) This Agreement between the City of Los Angeles and Contractor;
- 2) Exhibit A – Standard Provisions for City Contracts (Rev. 10/17)[v.3]
- 3) Exhibit B – Standard Subscription Terms and Conditions
- 4) Exhibit C – PulsePoint Licensing Fee Schedule

### 7.6 Entire Agreement

This Agreement contains the full and complete Agreement between the parties. No verbal agreement or conversation with any officer or employee of either party will affect or modify any of the terms and conditions of this Agreement. No-shrink-wrap, click-wrap, privacy policy, or other terms and conditions or agreements ("Additional Contractor Software Terms") provided with any products, services, documentation, or software hereunder shall be binding on City, even if use of the foregoing requires an affirmative "acceptance" of those Additional Contractor Software Terms before access is

permitted. All such Additional Contractor Software Terms shall be of no force or effect and shall be deemed rejected by City in their entirety.

#### 7.7 Counterparts and Electronic Signatures

This Agreement may be executed in one or more counterparts, and by the parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. The parties further agree that facsimile signatures or signatures scanned into .pdf (or signatures in another electronic format designated by City) and sent by e-mail shall be deemed original signatures.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives.

**THE CITY OF LOS ANGELES**

**PULSEPOINT FOUNDATION**

By: \_\_\_\_\_  
Ralph M. Terrazas  
Fire Chief  
Los Angeles Fire Department

By\*: \_\_\_\_\_  
Richard Price  
President

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**APPROVED AS TO FORM:**  
MICHAEL N. FEUER, City Attorney

By: \_\_\_\_\_  
Samuel W. Petty  
Deputy City Attorney

DATE: \_\_\_\_\_

**ATTEST:**  
HOLLY L. WOLCOTT, City Clerk

By: \_\_\_\_\_

DATE: \_\_\_\_\_

City Agreement Number: \_\_\_\_\_

## **EXHIBIT A**

### **STANDARD PROVISIONS FOR CITY CONTRACTS (Rev. 10/17)[v.3]**

## STANDARD PROVISIONS FOR CITY CONTRACTS

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## STANDARD PROVISIONS FOR CITY CONTRACTS

### **PSC-1.**    Construction of Provisions and Titles Herein

All titles, subtitles, or headings in this Contract have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this Contract. The language of this Contract shall be construed according to its fair meaning and not strictly for or against **CITY** or **CONTRACTOR**. The word "**CONTRACTOR**" includes the party or parties identified in this Contract. The singular shall include the plural and if there is more than one **CONTRACTOR**, unless expressly stated otherwise, their obligations and liabilities shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

### **PSC-2.**    Applicable Law, Interpretation and Enforcement

Each party's performance shall comply with all applicable laws of the United States of America, the State of California, and **CITY**, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. **CONTRACTOR** shall comply with new, amended, or revised laws, regulations, or procedures that apply to the performance of this Contract with no additional compensation paid to **CONTRACTOR**.

In any action arising out of this Contract, **CONTRACTOR** consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term or provision of this Contract is held void, illegal, unenforceable, or in conflict with any federal, state or local law or regulation, the validity of the remaining parts, terms or provisions of this Contract shall not be affected.

### **PSC-3.**    Time of Effectiveness

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

- A.    This Contract has been signed on behalf of **CONTRACTOR** by the person or persons authorized to bind **CONTRACTOR**;
- B.    This Contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;
- C.    The Office of the City Attorney has indicated in writing its approval of this Contract as to form; and
- D.    This Contract has been signed on behalf of **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

**PSC-4. Integrated Contract**

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter of this Contract, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in the provisions of PSC-5 hereof.

**PSC-5. Amendment**

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-3.

**PSC-6. Excusable Delays**

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this Contract, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's Subcontractors), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a Subcontractor of **CONTRACTOR** shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both **CONTRACTOR** and Subcontractor, and without any fault or negligence of either of them. In such case, **CONTRACTOR** shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit **CONTRACTOR** to perform timely. As used in this Contract, the term "Subcontractor" means a subcontractor at any tier.

In the event **CONTRACTOR'S** delay or failure to perform arises out of a Force Majeure Event, **CONTRACTOR** agrees to use commercially reasonable best efforts to obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

**PSC-7. Waiver**

A waiver of a default of any part, term or provision of this Contract shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

## **PSC-8.    Suspension**

At **CITY'S** sole discretion, **CITY** may suspend any or all services provided under this Contract by providing **CONTRACTOR** with written notice of suspension. Upon receipt of the notice of suspension, **CONTRACTOR** shall immediately cease the services suspended and shall not incur any additional obligations, costs or expenses to **CITY** until **CITY** gives written notice to recommence the services.

## **PSC-9.    Termination**

### **A.       Termination for Convenience**

**CITY** may terminate this Contract for **CITY'S** convenience at any time by providing **CONTRACTOR** thirty days written notice. Upon receipt of the notice of termination, **CONTRACTOR** shall immediately take action not to incur any additional obligations, costs or expenses, except as may be necessary to terminate its activities. **CITY** shall pay **CONTRACTOR** its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by **CONTRACTOR** to effect the termination. Thereafter, **CONTRACTOR** shall have no further claims against **CITY** under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights **CITY** is entitled to, shall become **CITY** property upon the date of the termination. **CONTRACTOR** agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

### **B.       Termination for Breach of Contract**

1.       Except as provided in PSC-6, if **CONTRACTOR** fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, **CITY** may give **CONTRACTOR** written notice of the default. **CITY'S** default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of **CITY**. Additionally, **CITY'S** default notice may offer **CONTRACTOR** an opportunity to provide **CITY** with a plan to cure the default, which shall be submitted to **CITY** within the time period allowed by **CITY**. At **CITY'S** sole discretion, **CITY** may accept or reject **CONTRACTOR'S** plan. If the default cannot be cured or if **CONTRACTOR** fails to cure within the period allowed by **CITY**, then **CITY** may terminate this Contract due to **CONTRACTOR'S** breach of this Contract.
2.       If the default under this Contract is due to **CONTRACTOR'S** failure to maintain the insurance required under this Contract, **CONTRACTOR** shall immediately: (1) suspend performance of any services under this Contract for which insurance was required; and (2) notify its employees and Subcontractors of the loss of insurance coverage and Contractor's obligation to suspend performance of

services. **CONTRACTOR** shall not recommence performance until **CONTRACTOR** is fully insured and in compliance with **CITY'S** requirements.

3. If a federal or state proceeding for relief of debtors is undertaken by or against **CONTRACTOR**, or if **CONTRACTOR** makes an assignment for the benefit of creditors, then **CITY** may immediately terminate this Contract.
4. If **CONTRACTOR** engages in any dishonest conduct related to the performance or administration of this Contract or violates **CITY'S** laws, regulations or policies relating to lobbying, then **CITY** may immediately terminate this Contract.
5. Acts of Moral Turpitude
  - a. **CONTRACTOR** shall immediately notify **CITY** if **CONTRACTOR** or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").
  - b. If **CONTRACTOR** or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, an Act of Moral Turpitude, **CITY** may immediately terminate this Contract.
  - c. If **CONTRACTOR** or a Key Person is charged with or indicted for an Act of Moral Turpitude, **CITY** may terminate this Contract after providing **CONTRACTOR** an opportunity to present evidence of **CONTRACTOR'S** ability to perform under the terms of this Contract.
  - d. Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elderly abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.

- e. For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this Contract, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of **CONTRACTOR**.
- 6. In the event **CITY** terminates this Contract as provided in this section, **CITY** may procure, upon such terms and in the manner as **CITY** may deem appropriate, services similar in scope and level of effort to those so terminated, and **CONTRACTOR** shall be liable to **CITY** for all of its costs and damages, including, but not limited to, any excess costs for such services.
- 7. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that **CONTRACTOR** was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-9(A) Termination for Convenience.
- 8. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- C. In the event that this Contract is terminated, **CONTRACTOR** shall immediately notify all employees and Subcontractors, and shall notify in writing all other parties contracted with under the terms of this Contract within five working days of the termination.

**PSC-10. Independent Contractor**

**CONTRACTOR** is an independent contractor and not an agent or employee of **CITY**. **CONTRACTOR** shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of **CITY**.

**PSC-11. Contractor's Personnel**

Unless otherwise approved by **CITY**, **CONTRACTOR** shall use its own employees to perform the services described in this Contract. **CITY** has the right to review and approve any personnel who are assigned to work under this Contract. **CONTRACTOR** shall remove personnel from performing work under this Contract if requested to do so by **CITY**.

**CONTRACTOR** shall not use Subcontractors to assist in performance of this Contract without the prior written approval of **CITY**. If **CITY** permits the use of Subcontractors, **CONTRACTOR** shall remain responsible for performing all aspects of this Contract and paying all Subcontractors. **CITY** has the right to approve **CONTRACTOR'S** Subcontractors, and **CITY** reserves the right to request replacement of any

Subcontractor. **CITY** does not have any obligation to pay **CONTRACTOR'S** Subcontractors, and nothing herein creates any privity of contract between **CITY** and any Subcontractor.

**PSC-12. Assignment and Delegation**

**CONTRACTOR** may not, unless it has first obtained the written permission of **CITY**:

- A. Assign or otherwise alienate any of its rights under this Contract, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties under this Contract.

**PSC-13. Permits**

**CONTRACTOR** and its directors, officers, partners, agents, employees, and Subcontractors, shall obtain and maintain all licenses, permits, certifications and other documents necessary for **CONTRACTOR'S** performance of this Contract. **CONTRACTOR** shall immediately notify **CITY** of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents that relate to **CONTRACTOR'S** performance of this Contract.

**PSC-14. Claims for Labor and Materials**

**CONTRACTOR** shall promptly pay when due all amounts owed for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of law from arising against any **CITY** property (including reports, documents, and other tangible or intangible matter produced by **CONTRACTOR** hereunder), and shall pay all amounts due under the Unemployment Insurance Act or any other applicable law with respect to labor used to perform under this Contract.

**PSC-15. Current Los Angeles City Business Tax Registration Certificate Required**

For the duration of this Contract, **CONTRACTOR** shall maintain valid Business Tax Registration Certificate(s) as required by **CITY'S** Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code ("LAMC"), and shall not allow the Certificate to lapse or be revoked or suspended.

**PSC-16. Retention of Records, Audit and Reports**

**CONTRACTOR** shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form or as otherwise approved by **CITY**. These records shall be retained for a period of no less than three years from the later of the following: (1) final payment made by **CITY**, (2) the expiration of this Contract or (3) termination of this Contract. The records will be subject to examination and audit by authorized **CITY** personnel or **CITY'S** representatives at any time. **CONTRACTOR** shall provide any reports requested by **CITY** regarding

performance of this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

In lieu of retaining the records for the term as prescribed in this provision, **CONTRACTOR** may, upon **CITY'S** written approval, submit the required information to **CITY** in an electronic format, e.g. USB flash drive, at the expiration or termination of this Contract.

#### **PSC-17. Bonds**

All bonds required by **CITY** shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Los Angeles Administrative Code ("LAAC") Sections 11.47 *et seq.*, as amended from time to time.

#### **PSC-18. Indemnification**

Except for the active negligence or willful misconduct of **CITY**, or any of its boards, officers, agents, employees, assigns and successors in interest, **CONTRACTOR** shall defend, indemnify and hold harmless **CITY** and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including **CONTRACTOR'S** employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by **CONTRACTOR**, Subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

#### **PSC-19. Intellectual Property Indemnification**

**CONTRACTOR**, at its own expense, shall defend, indemnify, and hold harmless the **CITY**, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity, and proprietary information: (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by **CONTRACTOR**, or its Subcontractors, in performing the work under this Contract; or (2) as a result of **CITY'S** actual or intended use of any Work Product (as defined in PSC-21) furnished by **CONTRACTOR**, or its Subcontractors, under this Contract. The rights and remedies of **CITY** provided in this section shall not be exclusive



and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

**PSC-20. Intellectual Property Warranty**

**CONTRACTOR** represents and warrants that its performance of all obligations under this Contract does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information.

**PSC-21. Ownership and License**

Unless otherwise provided for herein, all finished and unfinished works, tangible or not, created under this Contract including, without limitation, documents, materials, data, reports, manuals, specifications, artwork, drawings, sketches, blueprints, studies, memoranda, computation sheets, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas, matters and combinations thereof, and all forms of intellectual property originated and prepared by **CONTRACTOR** or its Subcontractors under this Contract (each a "Work Product"; collectively "Work Products") shall be and remain the exclusive property of **CITY** for its use in any manner **CITY** deems appropriate. **CONTRACTOR** hereby assigns to **CITY** all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared under this Contract. **CONTRACTOR** further agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

**CONTRACTOR** agrees that a monetary remedy for breach of this Contract may be inadequate, impracticable, or difficult to prove and that a breach may cause **CITY** irreparable harm. **CITY** may therefore enforce this requirement by seeking injunctive relief and specific performance, without any necessity of showing actual damage or irreparable harm. Seeking injunctive relief or specific performance does not preclude **CITY** from seeking or obtaining any other relief to which **CITY** may be entitled.

For all Work Products delivered to **CITY** that are not originated or prepared by **CONTRACTOR** or its Subcontractors under this Contract, **CONTRACTOR** shall secure a grant, at no cost to **CITY**, for a non-exclusive perpetual license to use such Work Products for any **CITY** purposes.

**CONTRACTOR** shall not provide or disclose any Work Product to any third party without prior written consent of **CITY**.

Any subcontract entered into by **CONTRACTOR** relating to this Contract shall include this provision to contractually bind its Subcontractors performing work under this Contract such that **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein.

**PSC-22. Data Protection**

- A. **CONTRACTOR** shall protect, using the most secure means and technology that is commercially available, **CITY**-provided data or consumer-provided data acquired in the course and scope of this Contract, including but not limited to customer lists and customer credit card or consumer data, (collectively, the “City Data”). **CONTRACTOR** shall notify **CITY** in writing as soon as reasonably feasible, and in any event within twenty-four hours, of **CONTRACTOR’S** discovery or reasonable belief of any unauthorized access of City Data (a “Data Breach”), or of any incident affecting, or potentially affecting City Data related to cyber security (a “Security Incident”), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. **CONTRACTOR** shall begin remediation immediately. **CONTRACTOR** shall provide daily updates, or more frequently if required by **CITY**, regarding findings and actions performed by **CONTRACTOR** until the Data Breach or Security Incident has been effectively resolved to **CITY’S** satisfaction. **CONTRACTOR** shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with **CITY**. At **CITY’S** sole discretion, **CITY** and its authorized agents shall have the right to lead or participate in the investigation. **CONTRACTOR** shall cooperate fully with **CITY**, its agents and law enforcement.
- B. If **CITY** is subject to liability for any Data Breach or Security Incident, then **CONTRACTOR** shall fully indemnify and hold harmless **CITY** and defend against any resulting actions.

**PSC-23. Insurance**

During the term of this Contract and without limiting **CONTRACTOR’S** obligation to indemnify, hold harmless and defend **CITY**, **CONTRACTOR** shall provide and maintain at its own expense a program of insurance having the coverages and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (template Form General 146 in Exhibit 1 hereto). The insurance must: (1) conform to **CITY’S** requirements; (2) comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. **CONTRACTOR** shall comply with all Insurance Contractual Requirements shown on Exhibit 1 hereto. Exhibit 1 is hereby incorporated by reference and made a part of this Contract.

**PSC-24. Best Terms**

Throughout the term of this Contract, **CONTRACTOR**, shall offer **CITY** the best terms, prices, and discounts that are offered to any of **CONTRACTOR’S** customers for similar goods and services provided under this Contract.

**PSC-25. Warranty and Responsibility of Contractor**

**CONTRACTOR** warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within **CONTRACTOR'S** profession, doing the same or similar work under the same or similar circumstances.

**PSC-26. Mandatory Provisions Pertaining to Non-Discrimination in Employment**

Unless otherwise exempt, this Contract is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in LAAC Section 10.8 et seq., as amended from time to time.

- A. **CONTRACTOR** shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and **CITY**. In performing this Contract, **CONTRACTOR** shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status or medical condition.
- B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this Contract by reference.
- C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Equal Employment Practices" provisions of this Contract.
- D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Affirmative Action Program" provisions of this Contract.

Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-27. Child Support Assignment Orders**

**CONTRACTOR** shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, **CONTRACTOR** shall fully comply with all applicable State and Federal employment reporting requirements. Failure of **CONTRACTOR** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of **CONTRACTOR** to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the **CONTRACTOR** under this Contract. Failure of **CONTRACTOR** or principal owner to cure

the default within 90 days of the notice of default will subject this Contract to termination for breach. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-28. Living Wage Ordinance**

**CONTRACTOR** shall comply with the Living Wage Ordinance, LAAC Section 10.37 *et seq.*, as amended from time to time. **CONTRACTOR** further agrees that it shall comply with federal law proscribing retaliation for union organizing. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-29. Service Contractor Worker Retention Ordinance**

**CONTRACTOR** shall comply with the Service Contractor Worker Retention Ordinance, LAAC Section 10.36 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-30. Access and Accommodations**

**CONTRACTOR** represents and certifies that:

- A. **CONTRACTOR** shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 *et seq.*, the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 *et seq.*, the Fair Housing Act, and its implementing regulations and any subsequent amendments, and California Government Code Section 11135;
- B. **CONTRACTOR** shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- C. **CONTRACTOR** shall provide reasonable accommodation upon request to ensure equal access to **CITY**-funded programs, services and activities;
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and
- E. The buildings and facilities used to provide services under this Contract are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

**CONTRACTOR** understands that **CITY** is relying upon these certifications and representations as a condition to funding this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-31. Contractor Responsibility Ordinance**

**CONTRACTOR** shall comply with the Contractor Responsibility Ordinance, LAAC Section 10.40 *et seq.*, as amended from time to time.

**PSC-32. Business Inclusion Program**

Unless otherwise exempted prior to bid submission, **CONTRACTOR** shall comply with all aspects of the Business Inclusion Program as described in the Request for Proposal/Qualification process, throughout the duration of this Contract. **CONTRACTOR** shall utilize the Business Assistance Virtual Network (“BAVN”) at <https://www.labavn.org/>, to perform and document outreach to Minority, Women, and Other Business Enterprises. **CONTRACTOR** shall perform subcontractor outreach activities through BAVN. **CONTRACTOR** shall not change any of its designated Subcontractors or pledged specific items of work to be performed by these Subcontractors, nor shall **CONTRACTOR** reduce their level of effort, without prior written approval of **CITY**.

**PSC-33. Slavery Disclosure Ordinance**

**CONTRACTOR** shall comply with the Slavery Disclosure Ordinance, LAAC Section 10.41 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-34. First Source Hiring Ordinance**

**CONTRACTOR** shall comply with the First Source Hiring Ordinance, LAAC Section 10.44 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-35. Local Business Preference Ordinance**

**CONTRACTOR** shall comply with the Local Business Preference Ordinance, LAAC Section 10.47 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-36. Iran Contracting Act**

In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with **CITY** for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit."

**PSC-37. Restrictions on Campaign Contributions and Fundraising in City Elections**

Unless otherwise exempt, if this Contract is valued at \$100,000 or more and requires approval by an elected **CITY** office, **CONTRACTOR**, **CONTRACTOR’S** principals, and **CONTRACTOR’S** Subcontractors expected to receive at least \$100,000 for performance under the Contract, and the principals of those Subcontractors (the “Restricted Persons”)

shall comply with Charter Section 470(c)(12) and LAMC Section 49.7.35. Failure to comply entitles **CITY** to terminate this Contract and to pursue all available legal remedies. Charter Section 470(c)(12) and LAMC Section 49.7.35 limit the ability of the Restricted Persons to make campaign contributions to and engage in fundraising for certain elected **CITY** officials or candidates for elected **CITY** office for twelve months after this Contract is signed. Additionally, a **CONTRACTOR** subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 and to amend the information in that form as specified by law. Any **CONTRACTOR** subject to Charter Section 470(c)(12) shall include the following notice in any contract with any Subcontractor expected to receive at least \$100,000 for performance under this Contract:

“Notice Regarding Restrictions on Campaign Contributions and Fundraising in City Elections

You are a subcontractor on City of Los Angeles Contract #\_\_\_\_\_. Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles (“**CITY**”) officials and candidates for elected **CITY** office for twelve months after the **CITY** contract is signed. You are required to provide the names and contact information of your principals to the **CONTRACTOR** and to amend that information within ten business days if it changes during the twelve month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at [ethics.lacity.org](http://ethics.lacity.org) or by calling the Los Angeles City Ethics Commission at (213) 978-1960.”

**PSC-38. Contractors’ Use of Criminal History for Consideration of Employment Applications**

**CONTRACTOR** shall comply with the City Contractors’ Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-39. Limitation of City’s Obligation to Make Payment to Contractor**

Notwithstanding any other provision of this Contract, including any exhibits or attachments incorporated therein, and in order for **CITY** to comply with its governing legal requirements, **CITY** shall have no obligation to make any payments to **CONTRACTOR** unless **CITY** shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this Contract. **CONTRACTOR** agrees that any services provided by **CONTRACTOR**, purchases made by **CONTRACTOR** or expenses incurred by **CONTRACTOR** in excess of the appropriation(s) shall be free and without charge to **CITY** and **CITY** shall have no obligation to pay for the services, purchases or expenses. **CONTRACTOR** shall have no obligation to provide any services,

provide any equipment or incur any expenses in excess of the appropriated amount(s) until **CITY** appropriates additional funds for this Contract.

**PSC-40. Compliance with Identity Theft Laws and Payment Card Data Security Standards**

**CONTRACTOR** shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act (“FACTA”), including its requirement relating to the content of transaction receipts provided to Customers. **CONTRACTOR** also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards (“PCI DSS”). During the performance of any service to install, program or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, **CONTRACTOR** shall verify proper truncation of receipts in compliance with FACTA.

**PSC-41. Compliance with California Public Resources Code Section 5164**

California Public Resources Code Section 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, or community center used for recreational purposes in a position that has supervisory or disciplinary authority over any minor, if the person has been convicted of certain crimes as referenced in the Penal Code, and articulated in California Public Resources Code Section 5164(a)(2).

If applicable, **CONTRACTOR** shall comply with California Public Resources Code Section 5164, and shall additionally adhere to all rules and regulations that have been adopted or that may be adopted by **CITY**. **CONTRACTOR** is required to have all employees, volunteers and Subcontractors (including all employees and volunteers of any Subcontractor) of **CONTRACTOR** working on premises to pass a fingerprint and background check through the California Department of Justice at **CONTRACTOR’S** sole expense, indicating that such individuals have never been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2), if the individual will have supervisory or disciplinary authority over any minor.

**PSC-42. Possessory Interests Tax**

Rights granted to **CONTRACTOR** by **CITY** may create a possessory interest. **CONTRACTOR** agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, **CONTRACTOR** shall pay the property tax. **CONTRACTOR** acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

**PSC-43. Confidentiality**

All documents, information and materials provided to **CONTRACTOR** by **CITY** or developed by **CONTRACTOR** pursuant to this Contract (collectively “Confidential Information”) are confidential. **CONTRACTOR** shall not provide or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by **CITY** or as required by law. **CONTRACTOR** shall immediately notify **CITY** of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this Contract.



## **EXHIBIT 1**

### **INSURANCE CONTRACTUAL REQUIREMENTS**

**CONTACT** For additional information about compliance with City Insurance and Bond requirements, contact the Office of the City Administrative Officer, Risk Management at (213) 978-RISK (7475) or go online at [www.lacity.org/cao/risk](http://www.lacity.org/cao/risk). The City approved Bond Assistance Program is available for those contractors who are unable to obtain the City-required performance bonds. A City approved insurance program may be available as a low cost alternative for contractors who are unable to obtain City-required insurance.

### **CONTRACTUAL REQUIREMENTS**

#### **CONTRACTOR AGREES THAT:**

- 1. Additional Insured/Loss Payee.** The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY'S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.
- 2. Notice of Cancellation.** All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.
- 3. Primary Coverage.** CONTRACTOR will provide coverage that is primary with respect to any insurance or self-insurance of the CITY. The CITY'S program shall be excess of this insurance and non-contributing.
- 4. Modification of Coverage.** The CITY reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving CONTRACTOR ninety (90) days' advance written notice of such change. If such change should result in substantial additional cost to CONTRACTOR, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.
- 5. Failure to Procure Insurance.** All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the inception of any operations by CONTRACTOR.

CONTRACTOR'S failure to procure or maintain required insurance or a self-insurance program during the entire term of this Contract shall constitute a material breach of this Contract under which the CITY may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect the CITY'S interests and pay any and all premiums in connection therewith and recover all monies so paid from CONTRACTOR.

- 6. Workers' Compensation.** By signing this Contract, CONTRACTOR hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake

self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all time during the performance of the work pursuant to this Contract.

**7. California Licensee.** All insurance must be provided by an insurer admitted to do business in California or written through a California-licensed surplus lines broker or through an insurer otherwise acceptable to the CITY. Non-admitted coverage must contain a **Service of Suit** clause in which the underwriters agree to submit as necessary to the jurisdiction of a California court in the event of a coverage dispute. Service of process for this purpose must be allowed upon an agent in California designated by the insurer or upon the California Insurance Commissioner.

**8. Aggregate Limits/Impairment.** If any of the required insurance coverages contain annual aggregate limits, CONTRACTOR must give the CITY written notice of any pending claim or lawsuit which will materially diminish the aggregate within thirty (30) days of knowledge of same. You must take appropriate steps to restore the impaired aggregates or provide replacement insurance protection within thirty (30) days of knowledge of same. The CITY has the option to specify the minimum acceptable aggregate limit for each line of coverage required. No substantial reductions in scope of coverage which may affect the CITY'S protection are allowed without the CITY'S prior written consent.

**9. Commencement of Work.** For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be considered to be in furtherance of or towards performance of this Contract. The requirements in this Section supersede all other sections and provisions of this Contract, including, but not limited to, PSC-3, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

## Required Insurance and Minimum Limits

Name: PulsePoint FoundationDate: 6/10/2020Agreement/Reference: Software as a Service Application

Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

### Limits

#### ☒ Workers' Compensation (WC) and Employer's Liability (EL)

WC StatutoryEL 1,000,000☐ Waiver of Subrogation in favor of City☐ Longshore & Harbor Workers☐ Jones Act

#### ☒ General Liability 1,000,000

☒ Products/Completed Operations☐ Sexual Misconduct☐ Fire Legal Liability☐

#### ☐ Automobile Liability (for any and all vehicles used for this contract, other than commuting to/from work)

#### ☒ Professional Liability (Errors and Omissions) 1,000,000

Discovery Period 12 month extended reporting period.

#### ☐ Property Insurance (to cover replacement cost of building - as determined by insurance company)

☐ All Risk Coverage☐ Boiler and Machinery☐ Flood☐ Builder's Risk☐ Earthquake☐

#### ☐ Performance Bond

☐

#### ☐ Surety Bonds - Performance and Payment (Labor and Materials) Bonds

#### ☐ Crime Insurance

#### Other: General Notes:

1. If a contractor has no employees and decides to not cover herself/himself for workers' compensation, please complete the form entitled "Request For Waiver Of Workers' Compensation Insurance Requirement" located at: <http://cao.lacity.org/risk/InsuranceForms.htm>

2. In the absence of imposed auto liability insurance requirements all contractors using vehicles during the course of their contract must adhere to the financial responsibility laws of the State of California.

## **EXHIBIT B**

### **STANDARD SUBSCRIPTION TERMS AND CONDITIONS**

# PULSEPOINT

## STANDARD SUBSCRIPTION TERMS AND CONDITIONS

This Software and Services Agreement (the “**Agreement**”) applies to and governs access to and use of the PulsePoint Respond System and is entered into between the PulsePoint Foundation, a California 501 (c)(3) non-profit corporation, (“**The Foundation**”), and the contracting entity (“**Customer**”).

### 1. PULSEPOINT RESPOND (“**System**”)

**Licensed Software.** The Licensed Software (as hereinafter defined) is a software-as-a-service (“**SaaS**”) pre- arrival solution designed to support public safety agencies working to improve communications with citizens and off-duty personnel to improve cardiac arrest survival rates via mobile applications.

The primary purpose of the Licensed Software is to provide: (1) community members the ability to receive notifications of CPR-needed medical events occurring in public places, (2) location of publicly accessible defibrillators, and (3) increased awareness of local emergency activity. (the “**Licensed Software**”). The Foundation owns all rights to the Licensed Software.

### 2. SYSTEM SERVICES.

**System Support.** The Foundation provides web-based, email, and telephone System Support (collectively, the “**System Support**”) at no additional cost to designated contacts of Customer. System Support consists of help with System navigation or troubleshooting arising from the use of the System, as designed. System Support excludes supporting Customer procured hardware, operating systems, and Internet connectivity.

Web-based System Support is provided through web-based, self-help educational resources available within the System 24/7/365. The Foundation provides numerous educational resources which should be used before requesting email or telephone System Support. These include user guide(s), training videos, and frequently asked questions (FAQs).

Tiered email and telephone System Support is available to supplement Web-based System Support. The Foundation's Support Center is staffed during prime Customer business hours, Monday – Friday, 7AM – 6PM PT, excluding major holidays. During “non-prime” hours (6PM – 7AM PT Monday – Thursday, and 6PM PT on Friday through 7AM PT the following Monday, and on major holidays), inquiries regarding major system outages and interface issues are supported by technical staff. General support inquiries started outside of prime hours will be addressed the next business day.

### 3. CUSTOMER REQUIREMENTS.

**3.1 PulsePoint Connect Server.** Customer must provide its own computer that meets the minimum hardware requirements to run the Licensed Software, as further defined in a separate Statement of Work that includes implementation of the Licensed Software.

**3.2 Named User Identification and Authentication.** The System requires a unique user name and password for the individual Customer representative (“**Named User**”) to access the System. Customer is responsible for administration and management of the Named User account, including the appropriate technical and administrative safeguards to prevent unauthorized access. The Foundation shall have no responsibility for unauthorized access to Customer's data or Confidential Information (as hereinafter defined) that results from Customer's failure to prevent unauthorized access.

### 4. LICENSE AND FEES.

**4.1 License.** Subject to the terms and conditions of this Agreement, The Foundation hereby grants to Customer a non-exclusive, non-transferable (except as provided in this Agreement) license to use the System for lawful business purposes.

#### 4.2 Fees.

**4.2.1 Subscription Fees.** Customer agrees to pay the Subscription Fees as set forth in applicable Quote. Subscription Fees include: System, Data Center Services, System Maintenance, Upgrades, and System Support. Subscription Fees will be invoiced annually.

**4.2.2 Professional Services Fees.** Customer agrees to pay Professional Services Fees as set forth in applicable Professional Services Engagements. Customer shall have the ability to either approve or deny any such services

prior to work being performed.

**4.2.3 Payment Terms.** Payment terms to the Foundation shall be NET 30 to ensure uninterrupted System service and support.

**4.2.4 Taxes.** The Foundation is required to collect sales tax from products and services provided to customers in certain states. The Foundation reserves the right to invoice the Customer those taxes now or at any time in the future, which are imposed upon the sale or delivery of items purchased or licensed.

If a certificate of exemption or similar document or proceeding is to be made in order to exempt the sale from sales or use tax liability, Customer will obtain and purchase such certificate, document or proceeding. Customer is required to provide a certificate of exemption in order for The Foundation to correctly identify Customer's tax status.

## **5. TERM AND TERMINATION.**

**5.1 Term Initiation.** This Agreement takes effect upon receipt of order and continues through the conclusion of the subscription term or any subsequent renewal subscription terms. The subscription term (the "**Term**") begins on Customer's Soft Launch (as herein defined) Date or 120 days from signature date on Quote, whichever comes first, and continues for duration of Term set forth in executed Quote. Soft Launch ("**Soft Launch**") is the first day Customer's incident data is available in the production environment. In the case of renewal, the subsequent of which Term is the first day after expiration of the previous Term.

**5.2 Term Renewal.** This Agreement shall automatically renew upon expiration of the then current Term, at the current System price list for the same Term, unless Customer notifies The Foundation of its intention for nonrenewal by written notification at least 45 days prior to the end of the then current Term, or unless The Foundation requires a new Agreement to be executed by the parties. If The Foundation requires a new Agreement, it will be provided to Customer at least 60 days prior to the end of the then current Term. Customer may decline to enter into a new Agreement in its sole and absolute discretion; and if Customer so declines, then Customer shall not be responsible for any Subscription Fees after the then current Term.

**5.3 Termination.** Either party may terminate the Agreement upon the other party's material breach of this Agreement, if within 30 days of receipt of written notification of breach; the breaching party has failed to cure its breach. The Foundation may terminate service immediately upon Termination of the Agreement. In the event of early Termination due to material breach by Customer, Customer shall be responsible for remaining Subscription Fees for the then current Term. In the event of early Termination due to material breach by The Foundation, Customer shall not be responsible for future Subscription Fees beyond the effective date of the termination of this Agreement.

Notwithstanding anything in this Section 5 or in this Agreement to the contrary, Customer may terminate this Agreement and Customer obligations hereunder during the initial Term or any subsequent renewal Term, without cause, for any reason, or for no reason, and in Customer's sole and absolute discretion.

Upon Termination, all of Customer's licenses and rights to the System shall terminate, and Customer shall immediately cease use of the System.

## **6. PROPRIETARY RIGHTS OF THE FOUNDATION IN THE LICENSED SOFTWARE AND DOCUMENTATION.**

**6.1 Nature of Rights and Title.** Customer acknowledges that the System and documentation supplied by The Foundation to Customer are proprietary and shall remain the sole and exclusive property of The Foundation and nothing in this Agreement shall be construed as transferring any aspect of such rights to Customer or any third party.

**6.2 Unauthorized Acts.** Customer agrees to notify The Foundation promptly of the unauthorized possession, use, or knowledge of any item supplied under this Agreement and of other proprietary information made available to Customer under this Agreement, by any person or organization not authorized by this Agreement to have such possession, use or knowledge. Customer's compliance with this subparagraph 6.2 shall not be construed in any way as a waiver of The Foundation's right, if any, to recover damages or obtain other relief against Customer for its negligent or intentional acts in regard to The Foundation's proprietary rights, or for breach of Customer's contractual obligations under this Agreement.

## PULSEPOINT STANDARD SUBSCRIPTION TERMS AND CONDITIONS

**6.3 Remedies.** If Customer attempts to use, copy, license, sub-license or otherwise transfer the Licensed Software or access to the System supplied by The Foundation under this Agreement, in a manner contrary to the terms of this Agreement or in competition with The Foundation or in derogation of The Foundation's proprietary rights, whether or not these rights are explicitly stated, determined by law, or otherwise, The Foundation shall have the right to obtain injunctive relief enjoining such action, in addition to any other remedies available to the Foundation under this Agreement, applicable law or in equity. Customer acknowledges that monetary damages would be inadequate.

**6.4 Infringement Indemnification.** The Foundation shall indemnify, defend and hold harmless Customer from and against any and all loss, cost, damage or liability, including reasonable attorneys' fees and expenses, arising out of or relating to any claim or cause of action for patent, copyright, and/or other intellectual property infringement (each, an **"Infringement Claim"**) asserted against Customer by virtue of the System, Software or documentation or Customer's use or possession of the System, Software or documentation pursuant to this Agreement. The Foundation shall defend or settle at its sole expense all suits and proceedings arising out of the foregoing; provided that Customer gives The Foundation prompt notice of any such Infringement Claim of which it learns. In all events, Customer shall have the right to participate at its own expense in the defense of any such suit or proceeding through counsel of its own choosing. In the event that any Infringement Claim is asserted by a third party with respect to the System or Customer's use thereof, then and in that event, Customer may terminate its use of the System and/or this Agreement without payment of any contracted fees for services or periods not provided.

### **7. CONFIDENTIALITY AND DATA USE.**

**7.1 Confidential Information.** The parties agree that any Confidential Information provided under this Agreement shall be held and maintained in strict confidence. Each party agrees to protect the Confidential Information of the other party in a manner consistent with the protections used to protect its own Confidential Information, including, without limitation, informing its employees of its obligations under this Agreement and taking such steps as are reasonable in the circumstances, or as reasonably requested by the other party, to prevent any unauthorized disclosure, copying or use of Confidential Information. Confidential Information means any proprietary material that the disclosing party designates as confidential (collectively, the **"Confidential Information"**). Confidential Information shall also include, without limitation, all information in any form which relates to the business, expertise and/or operations of the disclosing party, including without limitation, information in any form generally understood to be trade secret, proprietary or confidential and/or that is related to products and services, commercial and financial information, system functionality charts and descriptions, program code logic, trade secret information, and information about health care providers, customers and/or business partners. The Foundation will not use Confidential Information except as expressly provided in this Agreement. Confidential Information does not include information that (i) is already known to the receiving party at the time it is disclosed and has not been obtained wrongfully, (ii) becomes publicly known without the fault of the receiving party, (iii) is independently developed by the receiving party, (iv) is approved for release in writing by the disclosing party, (v) is disclosed without restriction by the disclosing party to a third party, or (vi) is disclosed pursuant to applicable statutory or other legal or accreditation obligation beyond the control of the receiving party.

**7.2 Unauthorized Disclosure.** The recipient of any Confidential Information shall, upon discovery of any unauthorized use or disclosure of such Confidential Information, or any other breach of these confidentiality obligations by the recipient, fully cooperate with the disclosing party to assist the disclosing party to regain possession of the Confidential Information and prevent the further unauthorized use or disclosure of the Confidential Information.

**7.3 Data Use.** Customer agrees to provide The Foundation certain Data (**"Data"**), identified in the Statement of Work and signed by Customer, for the purposes of making the System function as designed. Both parties understand and agree that Data received by The Foundation from Customer for use in the System may be public data subject to routine disclosure.

**7.3.1 Nationwide Third-Party Data Use.** The Foundation may share aggregated and deidentified Data received from Customer with certain third-party services if the third-party receives aggregate Data across other customers of The Foundation for uses deemed to be in the interest of public safety and consistent with The

Foundation's Data Use Policy. This policy includes review of third-party usage by an oversight panel consisting of PulsePoint customers and leading public safety trade association(s). Any Nationwide Third-Party Data Use will be disclosed to Customer.

**7.3.2 Performance and Statistical Data.** The Foundation recognizes the importance in identifying issues and improvements surrounding the functionality, integration, performance, and reliability of the System. Customer agrees that The Foundation may collect, maintain, and use technical information related to the System, including, but not limited to, its usage, functionality, integration, performance, and reliability. The Foundation may use this information to improve its products or to provide customized services or technologies.

## **8. LIMITED WARRANTY.**

For the duration of this Agreement (the "Warranty Period"), The Foundation will investigate, document and deliver any amendments or alterations to the Licensed Software or other System components that may be required to correct errors which significantly affect performance.

THE LIMITED WARRANTY SET FORTH IN THIS AGREEMENT IS THE ONLY WARRANTY MADE BY THE FOUNDATION. THE FOUNDATION EXPRESSLY DISCLAIMS, AND CUSTOMER HEREBY EXPRESSLY WAIVES, ALL OTHER WARRANTIES EXPRESS, IMPLIED OR STATUTORY, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE. THE FOUNDATION DOES NOT WARRANT THAT THE LICENSED SOFTWARE OR SYSTEM WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT, EXCEPT AS REQUIRED HEREIN TO ADDRESS ERRORS THAT SIGNIFICANTLY AFFECT PERFORMANCE, ERRORS IN THE LICENSED SOFTWARE OR SYSTEM WILL BE CORRECTED. THE FOUNDATION'S LIMITED WARRANTY IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF THE FOUNDATION FOR ANY CLAIMS AND/OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE INSTALLATION, USE OR PERFORMANCE OF THE LICENSED SOFTWARE OR SYSTEM.

## **9. LIMITATION OF LIABILITY.**

THE FOUNDATION'S LIABILITY FOR ANY ACTIONS, CLAIMS OR DAMAGES ARISING OUT OF OR RESULTING FROM THIS AGREEMENT OR THE SYSTEM IS LIMITED TO THE CUSTOMER'S IMPOSED INSURANCE REQUIREMENTS AS STATED IN THE MASTER AGREEMENT. IN NO EVENT SHALL THE FOUNDATION HAVE ANY LIABILITY FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF DATA OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING IN ANY WAY OUT OF THIS AGREEMENT UNDER ANY CAUSE OF ACTION. THE FOUNDATION WILL NOT BE LIABLE FOR LOSS, CORRUPTION OR COMPROMISE OF THE CONFIDENTIALITY OF CUSTOMER-PROVIDED DATA.

**10. REFERENCE AND SPONSORSHIP.** Customer agrees that The Foundation may identify Customer as a customer or user of the System on its website, App Store page and similar sites, and other marketing materials, and describe the project and the services provided by the Foundation to Customer. Nothing herein constitutes an endorsement of The Foundation by Customer.

## **11. GENERAL.**

**11.1 Assignment.** This Agreement and any related obligation of one party, may not be assigned in whole or in part without the prior written consent of the other party, which shall not be unreasonably withheld. Any attempt by either party to assign any of the rights, duties or obligations of this Agreement without such consent shall be void. After and upon approved assignment, this Agreement shall bind and inure to the benefit of the parties and their respective successors, assignees, transferees, and legal representatives.

**11.2 Amendment.** This Agreement can only be modified by a written agreement duly signed by persons authorized to sign agreements on behalf of Customer and The Foundation, and variance from the terms and conditions of this Agreement in any order or other written notification from the Customer will be of no effect.

**11.3 Severability.** If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**11.4 Entire Agreement.** Customer acknowledges that its authorized representative has read this Agreement,



understands it, and agrees on behalf of Customer to be bound by its terms and conditions. Further, Customer agrees that this Agreement constitutes the complete and exclusive statement of the agreement between the parties, which supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement, and other communications made or required pursuant to the terms of this Agreement shall be in writing and shall be (i) personally delivered, sent by nationally recognized courier service, or sent by certified mail, return receipt requested, and shall be deemed to have been received upon the earlier of actual receipt or five (5) business days after deposit with the nationally recognized courier service or deposit in the mail; (ii) sent by facsimile and deemed to have been received on the date of the facsimile confirmation; (iii) sent by electronic means and shall be deemed to have been received upon return of a read receipt.

**11.5 Notices.** Unless another address for a party has been specified by providing notice as set forth herein, such notices, demands, requests and other communications permitted or allowed under this Agreement must be sent to Customer at the address set forth on the signed Quote and to The Foundation, Attn: Legal, PO Box 12594, Pleasanton, CA 94588-2594.

## **EXHIBIT C**

### **PULSEPOINT LICENSING FEE SCHEDULE**

## PULSEPOINT LICENSING FEE SCHEDULE

<b>Term</b>	<b>Costs</b>
January 1, 2021 to December 31, 2021	\$28,000.00
January 1, 2022 to December 31, 2022 (optional)	\$28,000.00
January 1, 2023 to December 31, 2023 (optional)	\$28,000.00
<b>Total Allowable Costs Up To:</b>	<b>\$84,000.00</b>