PulsePoint

Contact Name	Jeffrey Isbell	Quote Number	PPF-00010025
Phone	(254) 724-8981	Created Date	1/18/2017
Email	jisbell@wilco.org	Expiration Date	3/31/2017
		Prepared By	Kraig Erickson
		Phone	(218) 384-1123
		Email	kraig.erickson@pulsepoint.org

Bill To Name	Williamson County EMS	Ship To Name	Williamson County EMS
Bill To	Attn: Jeff Jarvis, Department Chair PO Box 873 Georgetown, TX 78627	Ship To	321 @ 8th Street Georgetown, TX 78627

Product	Sales Price	Quantity	Total Price
PulsePoint Respond - Tier 1: Annual Subscription for covered population size <300,000. Includes PulsePoint Respond License, Maintenance & Support of PulsePoint Connect CAD service, PulsePoint Admin, and end-users.	USD 8,000.00	1.00	USD 8,000.00
PulsePoint Respond Implementation Project- Includes PulsePoint Connect Read-only CAD connection installation, configuration, testing, validation, AED registry organization, technical admin training, digital materials, and proj mgmnt of launch.	USD 10,000.00	1.00	USD 10,000.00

Total Price   USD 18,000.00

Order will be processed upon PulsePoint Foundation's acceptance of signed quote, signed Statement of Work, and Customer Purchase Order or payment. Upon acceptance, Customer will be invoiced for Implementation Fee.

Please return signed Quote, Statement of Work, and Payment to the PulsePoint representative listed above or mail to:

**PulsePoint Foundation
PO Box 12594
Pleasanton, CA 94588-2594**

Authorized PulsePoint Signature

Richard Price
Signature

Richard Price
Name

President   01/20/2017
Title   Date

Authorized Customer Representative

Signature

DAr A GATTil
Name

County Judy   02-07-2017
Title   Date

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")

1.1   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 cardiac arrest survival rates. The primary purpose of the Licensed Software is to provide community members the ability to: (1) receive notifications of CPR-needed medical events occurring in public places, (2) locate publicly accessible defibrillators, and (3) increase awareness of local emergency activity via mobile applications. (the "**Licensed Software**"). The Foundation owns all rights to the Licensed Software.

2.   SYSTEM SERVICES.

2.2   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.

2.2.1 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**).

2.2.2 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 CT 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. Payment terms and conditions are as follows:

4.2.3 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.

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

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 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.

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. 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. Notwithstanding, Customer understands and agrees that data received by The Foundation from Customer through the System is public data subject to routine disclosure to anyone, and may be freely used and reused without any legal restrictions on access or usage.

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 AMOUNTS PAID BY CUSTOMER IN THE TWELVE-MONTH PERIOD PRECEDING THE CLAIM. 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 Governing Law and Venue. This Agreement will be governed by the laws of the State of California and any action must be brought in the United States District Court for the Northern District of California, or the State of California District Court in Contra Costa County, California.

11.5 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.

11.6   Notices. All notices, demands, requests 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.

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 below and to The Foundation, Attn: Legal, PO Box 12594, Pleasanton, CA 94588-2594.

PulsePoint
Software and Services Agreement
Addendum 1

Whereas the PulsePoint Foundation and Customer desire to amend the **PULSEPOINT SOFTWARE AND SERVICES AGREEMENT** (the "Agreement"), this Amendment ("Addendum 1") identifies that the parties agree that the Agreement is amended as follows:

Section 4.2.4 Payment Terms: *Add the following after first sentence.*

Texas Prompt Payment Act Compliance: Payment for goods and services shall be governed by Chapter 2251 of the Texas Government Code. An invoice shall be deemed overdue the 31st day after the date the Williamson County Auditor receives an invoice for the goods or services. Interest charges for any overdue payments shall be paid by Williamson County in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of Williamson County's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

Section 5.3 Termination. *Replace the last sentence with the following.*

In the event of termination due to material breach by the Foundation, Customer will only be liable for its pro rata share of services rendered and goods actually received.

Section 11.4 Governing Law and Venue: *Remove this section entirely.*

Section 12: *Add this new section.*

12. Williamson County Special Provisions.

Right to Audit: Company agrees that Williamson County or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of Company which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Company agrees that Williamson County shall have access during normal working hours to all necessary Company facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. Williamson County shall give Company reasonable advance notice of intended audits.

Mediation: The parties agree to use mediation for dispute resolution prior to and formal legal action being taken on this Agreement.

This Addendum 1 is effective in concurrence with Agreement after latest authorized signature date below:

CUSTOMER	PulsePoint Foundation
BY:	BY:
DAN A GATTIS	Richard Price
Name (Print)	Name (Print)
[signature] 02-07-2017	*Richard Price* 01/20/2017
Signature Date	Signature Date
County Judge	President
Title	Title