

**SOLE SOURCE PROCUREMENT APPROVAL REQUEST
GOODS AND SERVICES**

All requests for sole source purchases must meet the criteria established under 2.2-4303 E. The County Administrator and/or the Chairman of the Board of Supervisors must sign this form.

Department Name Emergency Services

Department Signature [Signature]
I certify that I am the agency head or designee and hereby certify the following is a sole source vendor

Sole Source Vendor: Handtevy

Total Amount of Sole Source \$ 9,781.12

Description of Goods / Services
Pediatric medication system

Approved

Disapproved

More Information needed (specify and return to agency)

Signature [Signature] Date 5/22/24

Note: This form must be filed with the contract/purchase order. Departments are delegated authority to make contract award after appropriate approval. (Purchase using noncompetitive negotiation.)



January 11th, 2024

RE: Sole Source Letter - Handtevy Pediatric System

To Whom it May Concern,

This letter is to confirm that Pediatric Emergency Standards, Inc. ("PES") is the sole source provider of the Handtevy Pediatric System. The Handtevy System addresses the complexities of the critical patient by providing the only comprehensive pediatric system of care in the industry. Handtevy combines customization, technology, documentation, integration, durables and education to allow healthcare professionals to confidently treat pediatric patients rapidly and with confidence.

Handtevy is sole source as a result of the following:

1. Handtevy utilizes a proprietary Medication Management Software that allows healthcare providers to create custom medication and equipment guides tailored 100% to their pediatric protocols.
2. PES offers a clinical team comprised of pediatric physicians, nurses, paramedics and pharmacists for ongoing support.
3. The Handtevy System is the only "hybrid" system in the industry. Hybrid means both age based and length based offering providers a way to determine weight for dosing via age or length.
4. The Handtevy System is the only system that addresses children from preemie to age thirteen, and includes adult as well.
5. Custom medication and equipment guides created by the provider (addressed in #1) can be utilized in hard copy or via Handtevy Mobile. Hard copy medication guides are tear-proof, and water-proof. Reproduction of the hard copy medication guide is not permitted due version control, liability and copyright issues.
6. Handtevy Mobile is the only platform that offers custom medication dosing and equipment sizing on a mobile platform that can integrate into the ePCR for data collection.
7. The Handtevy Instructor Course is only taught by PES employed educators and is meant to be utilized with the Handtevy Pediatric System.
8. The Handtevy Pediatric Bag is the only bag that utilizes ages to correspond with the Handtevy dosing system.

For more information, please visit our website at www.Handtevy.com.
Please feel free to contact me with any questions.

Thank you,

A handwritten signature in cursive script that reads "Allison Antevy".

Allison Antevy
President & CEO



Quote

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

Expiration Date: 5/22/2024
Quote Number: Q-12553

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

Account Name: Wythe County EMS
Account #: 117179

Client Contact: Gregory Frazier
Account Rep: Lyra Tanner

Bill To: 195 West Spring Street
Wytheville, VA 24382

Ship To: 195 West Spring Street
Wytheville, VA 24382

Product Code	Description	Quantity	List Price	Unit Price	Total
HMPS24	Customization and Setup for Handtevy Mobile (One Time Fee)	1.000	\$1,390.00	\$1,390.00	\$1,390.00
HMPA24	Annual access to Handtevy Mobile. Access to Medication Management Software, Unlimited Clinical Updates Included, Clinical and Technical support	1.000	\$3,250.00	\$3,250.00	\$3,250.00
QST24	Handtevy Quick Start Training includes: - One Virtual Hybrid Handtevy Instructor Course Seat - Maximize Handtevy Mobile User Workshops - Live - Handtevy Administrator Workshops - Live	1.000	\$599.00	\$599.00	\$599.00
HPB6100	Each Pediatric Bag includes: 7 Equipment Pouches Side Compartment Organizer	7.000	\$490.00	\$490.00	\$3,430.00
HPB004	Length-based measuring tape	5.000	\$50.00	\$50.00	\$250.00
HPCP20	Handtevy Pediatric Provider Course (Handtevy Powered by Prodigy). For current Handtevy users.	35.000	\$20.00	\$20.00	\$700.00

Subtotal \$9,619.00
Total Price \$9,619.00
Tax \$0.00
Shipping and Handling \$162.12
Total \$9,781.12

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

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

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

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

PEDIATRIC EMERGENCY STANDARDS, INC.

TERMS AND CONDITIONS

1. DEFINITIONS.

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

2. LICENSE.

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

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

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

3. FEES.

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

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

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

4. DELIVERY.

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

5. SERVICE LEVEL AGREEMENT.

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

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

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

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

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

6. CUSTOMER DATA / PRIVACY.

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

7. TERM; TERMINATION.

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

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

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

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

11. INFRINGEMENT.

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

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

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

13. LIMITATION OF LIABILITY.

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

14. DISPUTE RESOLUTION.

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

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

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

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

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

18. **MISCELLANEOUS.**

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

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

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

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

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

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

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