Pulsara

ENTERPRISE SUBSCRIPTION AGREEMENT

This Subscription Agreement ("Agreement") is effective as of __March 19____, 201_8_ by and between West Allis EMS with offices located at 7332 W. National Ave., West Allis, WI 53214 and its subsidiaries (collectively, the "Subscriber") and CommuniCare Technology, Inc. dba Pulsara ("Pulsara") a Delaware corporation, at 2880 Technology Boulevard West, Bozeman, MT 59718.

> WHEREAS, Pulsara has developed a cloud-based platform, with mobile and desktop applications, for acute care coordination that enables improved communication among emergent healthcare providers (the "Software"); and
>
> WHEREAS, Subscriber is seeking to coordinate communication for emergent healthcare conditions.

Article 1. Definitions

"Healthcare Providers" – means physicians, physician assistants, nurses, paramedics, emergency care responders, and other physician extenders providing healthcare services in conjunction with Subscriber's EMS services whether they are employees, independent third parties or professionally affiliated with Subscriber.

"Patient Information" - means, collectively, information and data related to the provision of healthcare services to patients, their health status, medical records, and related information, including images, reports, lab and test results, medical treatments performed by Healthcare Providers, other "protected health information" as defined under HIPAA, and any other information provided on or entered into the Software or made available by Subscriber or its Healthcare Providers through the Software.

Article 2. Grant/Services

2.01 Grant of Software License. Pulsara grants to Subscriber a limited, nonexclusive, nontransferable license during the term, in the United States for Subscriber and Healthcare Providers only, to access and use the Software ("Software"). Pulsara reserves all rights not expressly granted.

2.02 Performance Analytics. In order to create and provide performance analytics, including, but not limited to, treatment and response times, benchmarking information, and related performance measures, Pulsara may aggregate and de-identify Patient Information in accordance with §164.514(a)-(b) of the HIPAA Privacy Rules. De-identified data will not contain any unique identifier to allow for re-identification. PHI that has been appropriately de-identified is not subject to the protection requirements of the Privacy Regulation, and is no longer considered PHI.

2.03 Service Performance. Usage data and error reports collected through the Software help Pulsara improve Software performance and effectiveness.

2.04. Implementation and Support Services. For no fee or other costs, Pulsara will implement and provide Subscriber access to the Software.

Article 3. Term and Termination.

3.01 <u>Term</u>. The term of this Agreement shall be one (1) year and shall automatically renew for successive one (1)-year terms.

3.02 <u>Healthcare Provider Access</u>. Pulsara may disable a Healthcare Provider's access if the Healthcare Provider is in violation of the terms of their End User License Agreement or any other agreement, policy, or terms of use applicable to the Software.

3.03. <u>Termination</u>. Either party may terminate this Agreement prior to the expiration of the Term upon written notice to the other party only as follows:
 a) if either party breaches a material provision of this Agreement and such breach is not cured within 30 days after written notice has been given to the breaching party; provided, however, that Subscriber access to the Software may be suspended during the 30-day cure period if the breach would cause potential damage to the Software or other Customers' continued safe use of the Software.
 b) in the event of a filing of a petition in bankruptcy whether voluntary or involuntary or an assignment for the benefit of creditors;
 c) by Subscriber upon 30 days written notice to Pulsara without refund; or
 d) by Pulsara upon 30 days' written notice to Subscriber.

3.04. <u>Effect of Termination</u>. Upon any termination of this Agreement, Subscriber's access to the Software will terminate.

Article 4. Usage

4.01 <u>Authorized Use</u>.   Subscriber is solely responsible for authorizing its access to the Software, maintaining all Login Information and overseeing use of the Software.

4.02. <u>Patient Information</u>. Subscriber and Pulsara acknowledge and agree that the Software may be used to transmit, collect, store, access, manage, and display Patient Information between and among Subscriber and Healthcare Providers and that Patient Information may be stored by Pulsara. Subscriber acknowledges and agrees that the Patient Information stored by Pulsara shall not serve as the system of record   for any patient, personal representative of a patient, health care provider, any business associate of a health care provider, or any affiliates of the foregoing.

4.03 <u>Medical Advice and Treatment</u>. Subscriber acknowledges and agrees that Pulsara does not provide medical advice, diagnosis, or treatment. Subscriber further acknowledges and agrees that the Software is merely a conduit of information related to patients and the provision of healthcare to patients by independent third party Healthcare Providers. Pulsara does not endorse, recommend, or otherwise favor a particular device for Subscriber's use of the Software. Pulsara assumes no liability for or relating to the delay, failure, interruption, or corruption of any data or other information transmitted in connection with use of the Software.

Article 5. Warranty

5.01 <u>Warranty</u>. Pulsara warrants that the Software licensed in this Agreement is free from significant programming errors and substantially complies with functionality criteria as set forth in www.pulsara.com/functional-criteria.

5.02 <u>Limitations on Warranty</u>. Except as provided for in section 6.01, Pulsara makes no representations or warranties, express or implied, with respect to software, and expressly disclaims all such representations and warranties, including any with respect to merchantability, reliability or fitness for a particular use or purpose. Without limiting the generality of the foregoing, Pulsara, makes no warranty, representation, or guaranty: (1) as to the sequence, accuracy, timeliness, relevance, or completeness of the software; (2) as to any information offered or provided within or through the software regarding treatment of medical conditions, actions, diagnoses, procedures, application of medication, or other provision of medical services; (3) that the use of the software will be uninterrupted or error free. Except as otherwise expressly provided for in this agreement, Subscriber's use of the software, and any third party technology is at Subscriber's own risk.

5.03 <u>Access</u>. Pulsara disclaims and waives any and all responsibility of Pulsara for any defect or service interruption in connection with local telecommunication network activity, capacity and compatibility with third party communication equipment, Internet access, software, browsers and servers, or the Subscriber's computer and telecom systems used to access the Software. Subscriber agrees that Pulsara is in no way responsible for any telecommunications or internet difficulties Subscriber may experience as a result of attempting to transmit data while using the Software and Subscriber waives any and all claims against Pulsara in connection with such use, unless the difficulties were caused solely by the gross negligence or willful misconduct of Pulsara.

 5.04 <u>Limited Liability</u>. Neither party will be liable to the other party for consequential, special, indirect, incidental, punitive, or exemplary damages, costs, expenses or losses or lost profits under this agreement. Neither party will be liable for any failure to perform its obligations under this agreement because of circumstances beyond its control. Pulsara will not be liable for any failure to perform its obligations under this agreement because of misuse of the software or third party technology. The parties' total cumulative liability for all matters arising out of or in connection with this agreement, whether in contract, tort or otherwise, will not exceed the total annual value of this agreement. The parties acknowledge that the terms of this section reflect the allocation of risk set forth in this agreement and that the parties would not enter into this agreement without these limitations of liability.

Article 6. Indemnification.

6.01 <u>Mutual Indemnification</u>. Subject to the limitations set by Wisconsin law, Subscriber shall indemnify, defend and hold Pulsara, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with any use of the Software and any breach of this Agreement by Subscriber as set forth below. Pulsara shall indemnify, defend and hold Subscriber's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with (i) Pulsara's breach of this Agreement or (ii) actual or alleged infringement of any patent, copyright or other property right arising from the Software. Notwithstanding any of the foregoing, Pulsara will have no obligation to defend Subscriber with respect to any Claim or Loss arising from any acts or omissions of Subscriber and/or any Healthcare Provider related to the provision of Medical Services or Subscriber's other operations.

Article 7. Intellectual Property

7.01 <u>Ownership and Title</u>. Except for the limited license and use rights expressly granted to Subscriber under this Agreement during the term, all title to and the rights in the Software (including any and all updates), including ownership rights to patents (registrations, renewals, and pending applications), copyrights, trademarks, trade secrets, Pulsara's or third party hardware, other technology, any derivatives of and all goodwill associated with the foregoing is the exclusive property of Pulsara and/or third parties.

Article 8. General Provisions

This Agreement will be construed in accordance with and governed by the internal law of the State of Wisconsin, without regard to the choice or conflicts of law provisions of any jurisdiction. In the event that Subscriber institutes any action or proceeding arising out of or relating to this Agreement, exclusive jurisdiction will be in the state or federal court for Milwaukee County. In the event that Pulsara institutes any action or proceeding arising out of or relating to this Agreement, exclusive jurisdiction shall be in the state or federal court where the Subscriber is located. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between Subscriber and Pulsara as a result of this agreement or use of the Software. The rights and/or obligations contained in this Agreement may not be assigned, delegated or otherwise transferred by either party (except to a direct or indirect parent or subsidiary) without the prior written approval of the other party, not to be unreasonably withheld, provided, however that either party may assign this agreement in connection with a merger, consolidation or acquisition of a party resulting in a change of control or a transfer or sale of all or substantially all of the assets of either party. No assignment or delegation shall relieve either party of liability for its obligations hereunder. The failure of either party to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by that party in writing. This Agreement, together with any applicable Business Associate Agreement (BAA), comprises the entire agreement between Subscriber and Pulsara and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein. The prevailing party in any action or proceeding to enforce any of the provisions of this Agreement shall be entitled to recover reasonable attorneys' fees, costs and expenses incurred in connection with such actions or proceeding. This Agreement may be signed in counterparts.

Pulsara and Subscriber have executed this Agreement as of the date first written above.

SUBSCRIBER: **West Allis EMS**	**COMMUNICARE TECHNOLOGY, INC. dba PULSARA**
By: _Man Pool_	By: _James W Woodson_
<u>Mason Pooler. Fire Chief, City of West Allis</u> Printed Name, Title	<u>James T. Woodson, CEO</u> Printed Name, Title