GENERAL SERVICES ADMINISTRATION
Federal Supply Service
Authorized Federal Supply Schedule Price List

On-line access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic delivery order are available through GSA Advantage!®, a menu-driven database system. The INTERNET address GSA Advantage!® is: GSAAdvantage.gov.

# Multiple Award Schedule

## Code F: Information Technology
F04. IT Software Subcategory

## Code G: Miscellaneous
G06. Complementary SINs Subcategory

**p photon** ™
accelerating healthcare

**Contract Number:** 47QTCA22D0062

*For more information on ordering from Federal Supply Schedules go to the GSA Schedules page at GSA.gov.*

**Period Covered by Contract:** March 23, 2022 through March 22, 2027
**Price List current through Supplement No:** PS-A815 **Effective Date**: March 29, 2022

**Contractor:** Photon Medical Communications, Inc.
6263 N Scottsdale Rd Ste 290
Scottsdale, AZ  85250
**Telephone:** (602) 412-1250
**Web Site:** www.photonmed.net

**Contract Administration:** Sara Guitar McCarter
**Telephone:** 870-565-0854
**E-mail:** sara@photonmed.net

**Business Size:** Small Business

## CUSTOMER INFORMATION

1a. Table of awarded special item number(s) with appropriate cross-reference to item descriptions and awarded price(s):

| SIN | Description |
|---|---|
| 511210 | Software Licenses |
| OLM | Order-Level Materials (OLM) |

1b. Identification of the lowest priced model number and lowest unit price for that model for each special item number awarded in the contract. This price is the Government price based on a unit of one, exclusive of any quantity/dollar volume, prompt payment, or any other concession affecting price. Those contracts that have unit prices based on the geographic location of the customer, should show the range of the lowest price, and cite the areas to which the prices apply. ** See Pages 4 and 5 for rates.

1c. If the Contractor is proposing hourly rates, a description of all corresponding commercial job titles, experience, functional responsibility and education for those types of employees or subcontractors who will perform services shall be provided. If hourly rates are not applicable, indicate "Not applicable" for this item. – Not Applicable

2. Maximum order:
Special Item Number 511210 - $500,000
Special Item Number OLM - $250,000

*Ordering activities may request a price reduction at any time before placing an order, establishing a BPA, or in conjunction with the annual BPA review. However, the ordering activity shall seek a price reduction when the order or BPA exceeds the simplified acquisition threshold. Schedule contractors are not required to pass on to all schedule users a price reduction extended only to an individual ordering activity for a specific order or BPA.

3. Minimum order: $100.00

4. Geographic coverage (delivery area): Worldwide

5. Point(s) of production (city, county, and State or foreign country):
Photon Medical Communications, Inc.
6263 N Scottsdale Rd Ste 290
Scottsdale, AZ 85250

6. Discount from list prices or statement of net price: Government Net Prices (discounts already deducted)

7. Quantity discounts: None

8. Prompt payment terms: Information for Ordering Offices: Prompt payment terms cannot be negotiated out of the contractual agreement in exchange for other concessions.": Net 30 Days

9. Foreign items: None

10a. Time of delivery: 90 Days

10b. Expedited Delivery: Please contact the Contractor for availability and rates.

10c. Overnight and 2-day delivery: Please contact the Contractor for availability and rates.

10d. Urgent Requirements: Please contact the Contractor for availability and rates.

11. F.O.B. point(s): Destination

**12a. Ordering address:**
Sara Guitar McCarter
Operations Manager
6263 N Scottsdale Rd Ste 290
Scottsdale, AZ  85250
870-565-0854
sara@photonmed.net

**12b. Ordering procedures:** For supplies and services, the ordering procedures, information on Blanket Purchase Agreements (BPA's) are found in Federal Acquisition Regulation (FAR) 8.405-3.

**13. Payment address:**
Photon Medical Communications, Inc.
6263 N Scottsdale Rd Ste 290
Scottsdale, AZ  85250

**14. Warranty provision:** See Photon Medical Communications, Inc's Software License, Maintenance and Service Agreement

**15. Export packing charges, if applicable:** Not Applicable

**16. Terms and conditions of rental, maintenance, and repair (if applicable):** See for Photon Medical Communications, Inc's Software License, Maintenance and Service Agreement

**17. Terms and conditions of installation (if applicable):** See Photon Medical Communications, Inc's Software License, Maintenance and Service Agreement

**18a. Terms and conditions of repair parts indicating date of parts price lists and any discounts from list prices (if applicable):** Not Applicable

**18b. Terms and conditions for any other services (if applicable):** Not Applicable

**19. List of service and distribution points (if applicable):** Not Applicable

**20. List of participating dealers (if applicable):** Not Applicable

**21. Preventive maintenance (if applicable):** Not Applicable

**22a. Special attributes such as environmental attributes (e.g., recycled content, energy efficiency, and/or reduced pollutants):** Not Applicable

**22b. If applicable, indicate that Section 508 compliance information is available on Electronic and Information Technology (EIT) supplies and services and show where full details can be found (e.g. contractor's website or other location.) The EIT standards can be found at: www.Section508.gov/:** Not Applicable

**23. Unique Entity Identifier (UEI) number:** LBZSBU5KHGD6

**24. Notification regarding registration in System for Award Management (SAM) Database:** Photon Medical Communications, Inc. is registered and active in SAM. CAGE Code: 8N1F8

## About Photon

Photon was founded in October 2011 by orthopedic surgeons who saw a need for technology that improves patient data access and communication lines between emergency rooms and on-call physicians. We have subsequently broadened the technology's application to address the needs of all physicians and care providers in a hospital and out into the hospital's extended community.

Our core philosophy is simplifying the provision of care to accelerate outcomes. Our applications were designed by doctors for doctors and feature modern user interfaces that are easy to learn and intuitive to use.

Photon's headquarters is in Scottsdale, AZ.

## Photon Solutions

Photon, our consult-driven application, bridges communication gaps throughout the continuum of patient care by facilitating secure sharing and discussion of decision-making data available anytime, anywhere.

This PMC Software Product enables physicians/caregivers/hospitalists from within a hospital to securely communicate with on-call physicians and all physicians involved in a patient's care, directly to and from their mobile smart devices, in a fully HIPAA-compliant confidential message containing the complete relevant patient record, consisting of medical records, high-resolution images, diagnostics, ER notes and test results obtained directly from the hospital HIS, ADT, EDIS, PACS, Lab systems, digital EKG's, as well as other digital feeds if available, etc., while keeping a time-stamped record and a comprehensive audit trail of all text exchanges, including logging of all access to confidential patient information. The PMC Software Product also enables physicians and caregivers from outside of a hospital to create confidential patient information securely and efficiently with texts, photos, and videos via SMS and/or push notification communications, in full compliance with HIPAA regulations, and communicate the confidential patient information with other physicians and caregivers inside or outside of a hospital, while keeping a time-stamped record and complete audit log of all text exchanges. The Photon Product can also be used for gaining rapid access to needed patient information within a Photon-enabled hospital, from a smart device, essentially extending a hospital's Portal for mobile access. Vital patient information can be sent on demand to providers instead of having the provider hunt for this information within the Hospital Information System.

The Photon annual term license also includes an embedded license for a product named Photon Scheduler for "on-call" scheduling.  This product interfaces with Photon and can be used for scheduling on call specialists as well as on call group's physician specialists.

| *Photon Annual Term License & Maintenance Fees* <br> *(Per Licensed Bed, Per Day)* |
|---|
| $1.07 |

## One Time Installation, Integration, and Implementation

### Installation Services and the Interface Server included:

(i) If Customer elects to have a physical server installed behind its firewall, procurement, configuration, and installation of the Interface Server with an Interface Engine

(ii) If Customer elects to use a virtual server behind its firewall, configuration of the virtual Interface Server with an Interface Engine

(iii) Setting up, Testing and Validation of VPN connectivity, as well as funding it for the duration of the Agreement.

### Integration Services included:

PMC shall provide system Integration Services that will establish interfaces between PMC Software and all of the Customer's relevant information systems "feeds" as mutually agreed upon by the Parties. Integration Services will include:

(i) Determining, obtaining, and verifying the quality of the data content in the system feeds obtained from Customer hospital information systems, are accurate and complete

(ii) Programming, testing, and troubleshooting efforts required to ensure technical integration and sustainability of the customer's system feeds

(iii) Validating that the Photon application built for Customer has successfully integrated with all of the relevant hospital information system feeds and quality testing to ensure that the feeds are ready for production.

### Implementation/Training Services:

PMC will train up to 12 System Administrators (SA) and User Managers (UM) and up to 100 physicians/caregivers (End Users) during the initial training period, hereafter referred to as "Initial Training". PMC's training process is based on the "Train the Trainer" approach where PMC trainers thoroughly train Customer's System Administrators and User Managers, including certifying User Managers to be Photon Trainers, who then become Customer's primary trainers for all future Photon End Users in the Customer hospital, or for community physicians/caregivers that Customer would like to include as part of its Photon End User network. The standard PMC Implementation and Training Project takes up to 12 weeks, and in addition to initial training of System Administrators, User Managers and End Users from selected specialties; PMC conducts Project Steering Committee meetings with Customer's Executive Management at least 3 times over the 12 week period to ensure that project milestones and training objectives are achieved, and that any issues impacting successful project completion are identified and resolved as soon as possible. These Steering Committee meetings augment the weekly project status meetings being conducted by the Implementation Teams of both the Customer and PMC.

This training approach is designed to enable the Customer to be self-sufficient in training additional End Users without the need for additional PMC Training/Implementation Services.

| *One Time Installation, Integration, and Implementation Fees* *(Per facility)* | |
|---|---|
| *Single Facility* | $61,964.74 |

## Terms and Conditions for all IT Contractors

1) **Organizational Conflicts of Interest**
    a) Definitions.
    "Contractor" means the person, firm, unincorporated association, joint venture, partnership, or corporation that is a party to this contract.

    "Contractor and its affiliates" and "Contractor or its affiliates" refers to the Contractor, its chief executives, directors, officers, subsidiaries, affiliates, subcontractors at any tier, and consultants and any joint venture involving the Contractor, any entity into or with which the Contractor subsequently merges or affiliates, or any other successor or assignee of the Contractor.

    An "Organizational conflict of interest" exists when the nature of the work to be performed under a proposed ordering activity contract, without some restriction on ordering activities by the Contractor and its affiliates, may either (i) result in an unfair competitive advantage to the Contractor or its affiliates or (ii) impair the Contractor's or its affiliates' objectivity in performing contract work.

    b) To avoid an organizational or financial conflict of interest and to avoid prejudicing the best interests of the ordering activity, ordering activities may place restrictions on the Contractors, its affiliates, chief executives, directors, subsidiaries and subcontractors at any tier when placing orders against schedule contracts. Such restrictions shall be consistent with FAR 9.505 and shall be designed to avoid, neutralize, or mitigate organizational conflicts of interest that might otherwise exist in situations related to individual orders placed against the schedule contract. Examples of situations, which may require restrictions, are provided at FAR 9.508

2) **Services Performed**
    a) All services performed by the Contractor under the terms of this contract shall be as an independent Contractor, and not as an agent or employee of the ordering activity.
    b) The Contractor shall commence performance of services on the date agreed to by the Contractor and the ordering activity.
    c) The Contractor agrees to render services only during normal working hours, unless otherwise agreed to by the Contractor and the ordering activity.

3) **Travel.** Any Contractor travel required in the performance of services must comply with the Pub. L. 99-234 and FAR Part 31.205-46, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel.

4) **Warranty**
    a) Unless otherwise specified in this contract, the Contractor's standard commercial warranty as stated in the contract's commercial pricelist will apply to this contract.
    b) The Contractor's commercial guarantee/warranty shall be included in the Commercial Supplier Agreement to include Enterprise User License Agreements or Terms of Service (TOS) agreements, if applicable.
    c) Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.

| Regulation Number | Regulation Title/Comments |
|---|---|
| 52.222-46 | EVALUATION OF COMPENSATION FOR PROFESSIONAL EMPLOYEES (FEB 1993) |
| 52.222-48 | EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT LABOR STANDARDS TO CONTRACTS FOR MAINTENANCE, CALIBRATION, OR REPAIR OF CERTAIN EQUIPMENT CERTIFICATION (MAY 2014) |
| 52.223-19 | COMPLIANCE WITH ENVIRONMENTAL MANAGEMENT SYSTEMS (MAY 2011) |
| 52.223-2 | AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (SEP 2013) |
| 52.229-1 | STATE AND LOCAL TAXES (APR 1984) |
| 52.222-62 | PAID SICK LEAVE UNDER EXECUTIVE ORDER 13706 (JAN 2017) |
| 52.223-13 | ACQUISITION OF EPEAT - REGISTERED IMAGING EQUIPMENT (JUN 2014) |
| 52.223-14 | ACQUISITION OF EPEAT® - REGISTERED TELEVISIONS (JUN 2014) |
| 52.223-16 | ACQUISITION OF EPEAT® - REGISTERED PERSONAL COMPUTER PRODUCTS (OCT 2015) |
| 552.238-115 | SPECIAL ORDERING PROCEDURES FOR THE ACQUISITION OF ORDER-LEVEL MATERIALS (MAY 2019) |
| 552.238-107 | TRAFFIC RELEASE (SUPPLIES) (MAY 2019) |
| 552.238-73 | IDENTIFICATION OF ELECTRONIC OFFICE EQUIPMENT PROVIDING ACCESSIBILITY FOR THE HANDICAPPED (MAY 2019) |
| 552.238-86 | DELIVERY SCHEDULE (MAY 2019) |
| 552.238-89 | DELIVERIES TO THE U.S. POSTAL SERVICE (MAY 2019) |
| 552.238-90 | CHARACTERISTICS OF ELECTRIC CURRENT (MAY 2019) |
| 552.238-91 | MARKING AND DOCUMENTATION REQUIREMENTS FOR SHIPPING (MAY 2019) |
| 552.238-92 | VENDOR MANAGED INVENTORY (VMI) PROGRAM (MAY 2019) |
| 552.238-93 | ORDER ACKNOWLEDGMENT (MAY 2019) |
| 552.238-94 | ACCELERATED DELIVERY REQUIREMENTS (MAY 2019) |

## TERMS AND CONDITIONS APPLICABLE TO F04. IT Software Subcategory

Technical Support

Without additional charge to the ordering activity, a hot line technical support number is available at **(800) 933-9517 and/or support@photonmed.net** for the purpose of providing user assistance and guidance in the implementation of the software. The technical support number is available **24/7.**

    i.    At the task or delivery order level, provide a telephone number **(800) 933-9517** and hours of operation **24/7** for technical support hotline; indicate applicable time zone for the hours of operation—i.e., Eastern time, Central, Mountain or Pacific time.

Descriptions and Equipment Compatibility
See the Photon Medical Communications, Inc's Software License, Maintenance and Service Agreement

Right-to-Copy Pricing: Not Applicable

Utilization Limitations
    a)    Software acquisition is limited to commercial computer software defined in FAR Part 2.101.

    b)    When acquired by the ordering activity, commercial computer software and related documentation shall be subject to the following:
        i.    Title to and ownership of the software and documentation shall remain with the Contractor, unless otherwise specified.
        ii.    Software licenses are by site and by ordering activity. An ordering activity is defined as a cabinet level or independent ordering activity. The software may be used by any subdivision of the ordering activity (service, bureau, division, command, etc.) that has access to the site the software is placed at, even if the subdivision did not participate in the acquisition of the software. Further, the software may be used on a sharing basis where multiple agencies have joint projects that can be satisfied by the use of the software placed at one ordering activity's site. This would allow other agencies access to one ordering activity's database. For ordering activity public domain databases, user agencies and third parties may use the computer program to enter, retrieve, analyze and present data. The user ordering activity will take appropriate action by instruction, agreement, or otherwise, to protect the Contractor's proprietary property with any third parties that are permitted access to the computer programs and documentation in connection with the user ordering activity's permitted use of the computer programs and documentation. For purposes of this section, all such permitted third parties shall be deemed agents of the user ordering activity.
        iii.    Except as provided above, the ordering activity shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime Contractors, subcontractors and agents of the ordering activity who have the ordering activity's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the ordering activity to use software, documentation, or information therein, which the ordering activity may already have or obtains without restrictions.
        iv.    The ordering activity shall have the right to use the software and documentation with the run-time computing environment (e.g. operating system, virtual machine, mobile operating system, processor etc.) to be specifically identified for which it is acquired at any other facility/user device to which that time computing environment may be transferred, or in cases of Disaster Recovery, the ordering activity has the right to transfer the software to another site/user device if the ordering activity site for which it is acquired is deemed to be unsafe for ordering activity personnel; to use the software and documentation with a backup time computing environment when the primary is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; to transfer a copy of the software to another site/user for purposes of benchmarking new hardware and/or software; and to modify the software and documentation or combine it with other software, provided that the unmodified portions shall remain subject to these restrictions.
        v.    "Commercial Computer Software" may be marked with the Contractor's standard commercial restricted rights legend, but the schedule contract and schedule pricelist, including this clause,

"Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersede any different or additional terms and conditions included in the standard commercial legend.

vi. Licensee Data belongs exclusively to Licensee, regardless of where the Data may reside at any moment in time including, but not limited to Licensor hardware, networks or other infrastructure and facilities where Data may reside, transit through or be stored from time to time. Licensor makes no claim to a right of ownership in Licensee Data. Licensor agrees to keep the Licensee Data Confidential as that term is defined in the relevant FAR and DFARS provisions pertaining to Confidential Information and Confidentiality. Licensor is not permitted to use Licensee's data for a purpose that is not explicitly granted in writing by Licensee. Upon Licensee request, for any reason whatsoever, Licensor must promptly return all Licensee Data in Licensor's possession in a format as may be designated at the time of request by Licensee.

vii. Licensee may create or hire others (including Licensor) to create modifications, customizations or other enhancements to the Software which might be classified as "Derivative Works" of the software. Unless otherwise negotiated and mutually agreed upon at the order level, the intellectual property (IP) rights to the Derivative Works shall be owned by the owner of the underlying intellectual property. The Derivative Work[s] shall be made available to the Licensee through a royalty free, perpetual worldwide, no charge license to the Licensee.

## Specific Instructions for SIN 511210 - Software Licenses

- Software Maintenance included in the cost of the annual term license.

- Offerors are encouraged to identify within their software items any component interfaces that support open standard interoperability. An item's interface may be identified as interoperable on the basis of participation in a government agency-sponsored program or in an independent organization program. Interfaces may be identified by reference to an interface registered in the component registry located at http://www.core.gov.

Software Conversions

Full monetary credit will be allowed to the ordering activity when conversion from one version of the software to another is made as a result of a change in operating system, or from one computer system to another. Under a perpetual license, the purchase price of the new software shall be reduced by the amount that was paid to purchase the earlier version. Under a term license, if conversion credits had accrued while the earlier version was under a term license, those credits shall carry forward and remain available as conversion credits which may be applied towards the perpetual license price of the new version.

## SERVICE CONTRACT LABOR STANDARDS (SCLS)

*The Service Contract Labor Standards (SCLS), formerly the Service Contract Act (SCA), is applicable to this contract as it applies to the entire Professional Services Schedule (PSS) Schedule and all services provided. While no specific labor categories have been identified as being subject to SCLS/SCA due to exemptions for professional employees (FAR 22.1101, 22.1102 and 29 CRF 541.300), this contract still maintains the provisions and protections for SCLS/SCA eligible labor categories. If and / or when the contractor adds SCLS/SCA labor categories / employees to the contract through the modification process, the contractor must inform the Contracting Officer and establish a SCLS/SCA matrix identifying the GSA labor category titles, the occupational code, SCA labor category titles and the applicable WD number. Failure to do so may result in cancellation of the contract.*

<u>PHOTON MEDICAL COMMUNICATIONS, INC.</u>

<u>SOFTWARE LICENSE AND MAINTENANCE AND SERVICES AGREEMENT</u>

This SOFTWARE LICENSE AND MAINTENANCE AND SERVICES AGREEMENT (this "<u>Agreement</u>") is entered into and made effective as of the date set forth in the Purchase Order, Statement of Work, or similar document (the "<u>Effective Date</u>") by and between the Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document("<u>Customer</u>"), and Photon Medical Communications, Inc. ("<u>PMC</u>"). For purposes of this Agreement, Customer and PMC may be individually referred to as a "<u>Party</u>," and collectively as the "<u>Parties</u>."

## RECITALS

**WHEREAS**, Customer operates hospitals or healthcare facilities at one or several locations as listed and further described in each <u>Schedule 1</u>, attached and incorporated herein;

**WHEREAS**, PMC is in the business of providing advanced technology by delivering solutions via a proprietary communications platform ("<u>PMC Technology</u>");

**WHEREAS,** Customer desires to use the PMC Technology offered by PMC; and

**WHEREAS**, the Parties desire to enter into this Agreement, subject to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants contained in this Agreement, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## AGREEMENT

## 1. *Definitions.*

The definition of terms in this Section 1 will apply to this Agreement (in addition to terms expressly defined elsewhere herein) including all schedules, addendums, and amendments made to or incorporated herein now or in the future.

(a) "**Confidential Information**" means any and all information and/or data (whether in oral, written or electronic form) belonging or relating to either Party, its business affairs or activities which is not in the public domain and which: (A) either Party has marked as confidential or proprietary; or (B) either Party, either orally or in writing, has advised the other Party is of a confidential nature.

(b) "**Customer Product Package**" means the PMC Software, together with all New Product Releases and Product Updates licensed to Customer pursuant to the Maintenance and Support Services during the Term of this Agreement.

(c) "**End User**" shall mean a natural person, including but not limited to, a healthcare professional, including but not limited to, a physician, nurse, clinician, paramedic, or vendor, who is a member of the extended network of approved providers/healthcare professionals, invited by Customer to use PMC Products in connection with this Agreement and who has accepted the End User License Agreement.

(d) "**Intellectual Property Right**" means, without limitation, any intellectual property right, title and interest, including any derivative right, moral right and personal right, in and to the following:

(i) Any work, invention, trademark, industrial design, confidential information or trade secret associated with the Customer Product Package;

(ii) Any certificate which registers, grants or acknowledges ownership or interests in

any of the intellectual rights in question; and

(iii)    Any request for the registration, granting or acknowledgement of ownership or interests in any of the intellectual property rights in question.

(e)    "**Minimum Installation**" means the computer equipment, operating system software, peripherals and other software, data lines and transmission speeds, and equipment which are to be obtained and maintained solely for the use of the software by Customer and/or its Subcontractors for use in hosting, accessing, and otherwise utilizing the Customer Product Package in accordance with this Agreement.

(f)    "**New Product Releases**" means new releases of the Customer Product Package that may be identified with a new integer version number or name (i.e. 2.xx, 3.xx, 4.xx, etc.) and not considered a Product Update. A "New Product Release" is a vehicle for delivering major and minor feature development and enhancements to existing features.

(g)    "**Patch**" means a vehicle for delivering enhancements to existing features and defect corrections. A Patch incorporates all applicable defect corrections made in a prior Patch.

(h)    "**PMC Software**" shall mean all the PMC Software Programs described in the attached Schedule(s) that PMC is licensing to Customer to access and use.

(i)    "**PMC Maintenance and Support**" shall mean software updates and support services provided by PMC for support of the Customer Product Package, in accordance with the provisions described below under the "Maintenance and Support" Section of this Agreement.

(j)    "**PMC Product**" shall mean any software product sold or licensed to Customer by PMC.

(k)    "**Project Manager**" means the person designated by each Party (or any substitute notified in writing to the other Party) who will represent it and will have full authority to take all steps, make all decisions and give all consents required with respect to the performance of this Agreement.

(l)    "**Product Updates**" means any improvements to the Customer Product Package (such as bug fixes and/or new features, new functionality, or increased efficiency) released by PMC as a Program Update dot release to the product version (for example 3.01, 3.02, 3.1, 3.2, etc. with respect to a 3.xx version of the Customer Product Package).

(m)    "**Subcontractor**" shall mean an independent contractor engaged by a Party in connection with this Agreement that has executed an agreement with the subcontracting Party, to which the other, non-subcontracting Party hereto is a designated third party beneficiary, and pursuant to which such subcontractor agrees to comply with the obligations of the subcontracting Party under this Agreement including, without limitation, obligations relating to confidentiality and limitations on use and disclosure of the Customer Product Package.

(n)    "**System Administrators**" means Photon System Administrators, generally 3 to 5 individuals that are designated by Customer, and are responsible for setting up End Users, as well as assigning various access levels and permissions for users.

## 2.  *Licensing*

(a)    <u>Grant of License.</u> PMC hereby grants Customer a non-transferrable, non-exclusive, license to use the PMC Software, as described on <u>Schedule 1A, and all subsequent Schedule 1's (1B, 1C, etc.).</u> The licensed PMC Software will be made available to Customer via a software as a service solution ("<u>SaaS</u>"), hosted by PMC.

(b)    <u>License Restrictions</u>. Subject to the terms set forth in this Agreement, Customer may use the PMC Software solely for Customer's own internal business use, which shall not include any renting, leasing, or sublicensing, transferring, or distribution to any third party. Customer's Subcontractors may access and use the Customer Product Package solely in the performance of their contracted obligations for Customer relating to such licensure and/or compliance with the law, and in accordance with all of the terms and

conditions of this Agreement including, without limitation, obligations of confidentiality and limitation on the use and disclosure of the Customer Product Package.

### 3. *"PMC's Services.*

PMC shall make available the following Services below, and will be priced as set forth in Schedule 3:

(a)    <u>Installation</u>. PMC agrees it shall coordinate with staff members designated by Customer and made available to PMC by Customer, to include at a minimum, technical support specialists from Customer's Information Technology department or others employed responsible for supporting the process of interfacing, testing, integrating, and ultimately installing and incorporating PMC Products with Customer's technology infrastructure.

(b)    <u>Integration</u>. PMC shall provide system integration services that will establish interfaces between PMC applications and Customer's information systems as mutually agreed upon by the Parties.

(c)    <u>Training Services</u>. PMC shall provide initial product training to designated staff members of Customer for the installation of the interface ("<u>Initial Training</u>"). All training materials provided during the Initial Training period will be available online and shall be made available by PMC to Customer throughout the term of this Agreement, and any such materials may be printed by Customer at any time at no additional charge. After the Initial Training, any further training and/or consulting services requested by Customer will be billed as then quoted.

(d)    <u>Roles and Responsibilities</u>. PMC shall perform its roles and fulfill its responsibilities as set forth in this Agreement.

(e)    <u>Notice of Exclusion</u>. PMC represents and warrants that it, its shareholders, directors, or employees have never been convicted of any offense related to healthcare or listed by a federal agency as debarred, excluded or otherwise ineligible for federal program participation.

### 4. *Customer's Obligations.*

(a)    <u>Resources.</u>

(i)    Customer shall appoint "Systems Administrators," responsible for being the technical point of contact with PMC. Customer further agrees to appoint a "Program Manager," responsible for being the key contact person for managing the completion of the Customer's agreed to deliverables. From time to time, on an as needed basis, Customer will provide technical experts. Customer agrees and understands that Customer shall cause all activities of Customer's employees and agents to be coordinated with PMC throughout the implementation and use of the system during the Term of this Agreement.

(ii)    Customer shall provide PMC, in writing, with the identity and contact information of the Program Manager and System Administrators within a reasonable time after execution of this Agreement.

(b)    <u>Implementations.</u> Customer agrees it shall cause all requirements and agrees it shall take all reasonable action as requested by PMC to meet all requirements as set forth in Schedule 2 attached, the <u>Minimum System Requirements</u>, to be fulfilled, for each facility planned for implementation, prior to the PMC implementations and throughout the Term of this Agreement.

(c)    <u>Access.</u> Customer shall provide PMC with all reasonable access to the Customer's network infrastructure, related servers, other hardware and software during the Term of this Agreement. Customer shall provide PMC access to Customer's personnel and equipment (including remote access) during standard support hours to facilitate support services requests.

(d)    <u>Reporting</u>. Customer shall document and promptly report to PMC all errors, malfunctions or failures to perform in accordance with functional specifications.

(e)    <u>Training</u>. Customer shall ensure the Program Manager and several System Administrators,

as well as a sufficient quantity of individuals from departments that will use PMC Products, who are responsible for driving usage of PMC Products (collectively, "User Managers"). Customer shall ensure each User Manager will attend the Initial Training.

(f)     Pricing and Payment Schedule: Customer agrees to the Pricing and Payment Schedule as set forth in each Schedule 1 in accordance with the GSA Schedule Pricelist.

(g)     Notice of Exclusion. Customer agrees to immediately notify PMC of any threatened, proposed or actual sanction or exclusion from any Federal Health Care Program (as defined in the Social Security Act), including, but not limited to Medicare, Medicaid, or TRICARE.

## 5. *Representations & Warranties/Limitation of Warranty*.

(a)     PMC represents and warrants to Customer that:

(i)     it has all necessary rights, authorizations and licenses to enter into this Agreement and to provide the Support Services and Customer Product Package and it has and will comply in full with the terms of any such licenses or authorizations;

(ii)     it will comply with and perform its obligations under this Agreement with all reasonable skill, care and attention using appropriately skilled personnel; and

(iii)     PMC is the true and lawful owner of the Customer Product Package and has clear title to the Customer Product Package or PMC has obtained and currently holds valid and sufficient rights to license the Customer Product Package to Customer herein and to convey all other rights and licenses granted to Customer under this Agreement.

(b)     The Minimum Installation. Customer acknowledges that, although PMC may have made certain recommendations to Customer regarding the Minimum Installation, PMC has not represented nor warranted, nor has it in any other way undertaken any responsibility or obligation for the reliability, suitability or capability of the Minimum Installation.

(c)     The Customer Product Package. PMC makes no warranties whatsoever whether express or implied, with regard to the merchantability or fitness for any purpose of the customer product package, or any part or component thereof. Customer acknowledges that the customer product package is of such complexity that any component may have inherent defects and agrees the sole liability of PMC and the sole exclusive remedy of customer for deficiencies which are not capable of repair using reasonable efforts or replacement with product(s) of equal or better functionality under the warranty or pursuant to the support services, is limited to the greater of (i) $1,000 and (ii) a refund of those fees paid to PMC by Customer.

(d)     Disclaimer of Warranties. The express warranties set forth herein are the only warranties provided with respect to this agreement. Customer expressly disclaims all other express or implied warranties, including, without limitation, all warranties regarding latent defects, title, merchantability or fitness for a particular purpose.

(e)     Exclusions from Warranty. Customer understands and acknowledges that, except for the basic Maintenance and Support Services defined herein and other services that may be provided by PMC pursuant to written amendment(s) to this Agreement, services not performed by PMC that affect the performance of the Customer Product Package such as installation, implementation, integration, or supplementation, PMC will have no obligations under this Warranty, and the Warranty shall not apply to the extent breaches of the Warranty result from such services performed by any party other than PMC or a third party acting on behalf of PMC or under the control or direction of PMC, that result in abuse, misuse or mishandling of the Customer Product Package; or from modifications to the Customer Product Package not made, or approved in writing, by PMC or from the integration of the Customer Product Package with other Customer or other third-party systems.

## 6. *Agreement Term.*

This Agreement shall begin on the Effective Date and continue until the twelve(12) month anniversary of the Effective Date, unless earlier terminated pursuant to the terms of this Agreement (the "Initial Term"). This Agreement may be renewed after the Initial Term for additional one (1) year periods by executing an order in writing (the "Renewal Term" and, collectively with the Initial Term, the "Term"). This Agreement and any Maintenance and Support or the licensing of additional PMC Products or services in any and all subsequent Schedule 1's, may be renewed or extended, which shall extend the Term by the amount specified in the renewed/extended or additional Schedule 1's, for the items renewed, or extended or licensed. The Agreement shall terminate with the expiration of the Term for all the associated PMC Products, PMC Maintenance and Support and Services under all the Schedule 1's, except for such provisions that may be indicated herein as surviving termination of the Agreement. Notwithstanding the foregoing, the Agreement is subject to termination as provided in Section 13 (Termination of Agreement) below.

## 7. *Fees.*

The "**Fees**" for PMC Products, Maintenance and Support, and Services are specified in each Schedule 1 are subject to change upon renewal or extension of the Term or as specified in a subsequent price quote for Customer in accordance with the then current GSA Schedule Pricelist. The Fees must be paid in United States Dollars. If Customer is paying in response to a PMC invoice, Customer shall make payment within the time specified by the payment terms in each Schedule 1 or within thirty (30) calendar days of the date of receiving the invoice if not otherwise specified. Amounts due shall be considered paid when PMC is in receipt of the amount due or upon confirmation of receipt by a bank designated by PMC. If Customer fails to fulfill its payment obligations for undisputed Fees as specified herein, PMC shall have the right to (assess finance charges at the rate allowed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. Notwithstanding the above, the first payment by Customer to PMC will be due and payable immediately upon execution of this Agreement.

## 8. *Costs and Expenses.*

Except as expressly provided in this Agreement or as specified in a price quote, each Party shall be responsible for all costs and expenses incurred by that Party in performing its obligations or exercising its rights under the Agreement.

## 9. *Taxes.*

*"Taxes" means any form of taxation, levy, duty, customs fee, charge, contribution or impost of whatever nature and by whatever authority imposed (including without limitation any fine, penalty, surcharge or interest), excluding any taxes based solely on the net U.S. income of PMC.* **Photon shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 552.212-4(k)**. *Customers with a tax-exempt status shall provide to PMC documentation of such status sufficient for PMC and Customer to avoid liability for qualifying Taxes.*

## 10. *Limitation of Liability.*

(a)    PMC's cumulative liability to Customer's hospital(s) facility(s) and/or any other person or entity for any loss or damages resulting from any claims, demands, or actions arising out of or relating to this Agreement, the PMC Products, PMC services and/or PMC Support shall not exceed the lesser of:

(i)    $500,000 U.S. dollars; or

(ii)    the amount paid by Customer to PMC under the applicable purchase order.

(b)      In no event shall PMC be liable for any indirect, incidental, consequential, special, or exemplary damages or lost profits, even if PMC has been advised of the possibility of such damages. The limitations set forth in this Section shall apply whether Customer's claim is based on breach of contract, tort, strict liability, product liability, or any other theory or cause of action.

## 11. *Intellectual Property Rights.*

Customer recognizes and acknowledges PMC's ownership and title to the PMC trademark, and to PMC's copyrights, patents, trademarks, trade secrets, and any other intellectual property and proprietary rights of any kind in any jurisdiction pertaining to or embodied in PMC Products or on PMC's website (collectively the "PMC Intellectual Property Rights"). Nothing in the Agreement shall be interpreted to assign or to grant exclusive rights to Customer to any of the PMC Intellectual Property Rights. Customer hereby agrees not to use PMC's trade names or any derivation thereof in Customer's corporate title or name, or for its products or services. Customer agrees not to contest or take any action in opposition to PMC trademarks or service marks or to attempt to register any mark substantially similar to any PMC trademark or service mark.

## 12. *Publicity and Use of Name.*

Customer will not use the names, trade names, trademarks, or other service marks of PMC without the express prior written approval of PMC. Notwithstanding anything to the contrary in this Agreement, Customer hereby authorizes PMC to make public reference to Customer's selection of the Customer Product Package and the general nature of the Support Services provided, subject to Customer's prior written consent to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.

## 13. *Termination of Agreement.*

 When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, PMC shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. In the event of expiration or termination of the Agreement for any cause, all rights granted under the Agreement shall automatically terminate. The termination or expiration of the Agreement shall not, however, relieve either Party from any obligation or liability that has accrued under the Agreement prior to the date of such expiration or termination. The provisions of Sections 5 (Representations & Warranties and Limitation of Warranty), 10 (Limitation of Liability), 11 (Intellectual Property Rights), 14 (Confidentiality and Non- Disclosure Undertaking), 15 (Limited Indemnification), and 23 (General) will survive the expiration or termination of this Agreement for any reason whatsoever.

## 14. *Confidentiality and Non-Disclosure Undertaking.*

(a)      The receiving Party (the "Recipient") undertakes to keep and maintain all Confidential Information received from the other Party (the "Disclosing Party"), in the strictest confidence, and will not disclose such information to any third party without the prior written consent of the Disclosing Party.

The Recipient will ensure that its employees, Subcontractors, and agents will only be given access to Confidential Information received from the Disclosing Party, on a "need to know" basis for the purposes of this Agreement, will have been made aware of the requirements of confidentiality with respect to such information set out in this Section and will not cause or permit the Confidential Information to be disclosed to any third party other than authorized Subcontractors. Either Party may reasonably require the other Party to verify compliance.

(b)      Without prejudice to the other rights of the Disclosing Party, if Confidential Information is disclosed to a third party in breach of the terms of this Section, the Recipient will use all reasonable efforts

to assist the Disclosing Party in recovering and preventing such third party from using, disseminating, selling or otherwise disposing the Confidential Information.

(c)      The provisions of this Section will not prevent the Recipient from disclosing any information that:

(i)      at the time of disclosure to the Receiving Party, is in the public domain;

(ii)      after disclosure, becomes part of the public domain by publication or otherwise, except by breach of this Agreement or other agreement between any of the Parties or their Subcontractors relating to activities related to or in support of the implementation, installation, configuration or use of the Customer Product Package;

(iii)      was in the Receiving Party's possession at the time of disclosure to the Receiving Party, and which was not acquired, directly or indirectly, from the Disclosing Party;

(iv)      the Receiving Party can demonstrate resulted from its own research and development, independent of disclosure, directly or indirectly, from the Disclosing Party;

(v)      the Receiving Party received from third parties, provided that such information was not obtained by such third parties directly or indirectly from the Disclosing Party on a confidential basis; or

(vi)      information which is produced in compliance with applicable law or a court order, provide that the Disclosing Party is given reasonable notice of such law or order and an opportunity to attempt, at the expense of the Disclosing Party, to preclude or limit such production.  PMC recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

(d)      The Parties will at all times comply with the provisions and obligations imposed by law in storing and processing personal data in the United States, and all personal data acquired by either Party from the other will be returned to the disclosing Party on request.

(e)      PMC is a Business Associate of Customer and this Agreement shall be subject to compliance with the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the final regulations implementing the privacy and security provisions of HIPAA as amended from time to time.

(f)      The parties understand that PMC in the performance of their assigned responsibilities under this Agreement, may require access to any individually identifiable health information of patients of Hospital.

(g)      Nothing in this Agreement will prevent PMC using for any purpose any know-how or experience including programming tools, skills and techniques gained or arising from the performance of its Maintenance and Support Services, as well as Installation, Implementation and Training Services.

(h)      The provisions of this Section will apply during the course of this Agreement and for such period as the Confidential Information can be protected by law.

(i)      The Parties will comply with any reasonable request made or direction given in connection with the requirements of applicable data protection legislation; and observe the provisions of such legislation in the provision of the Support Services.

## 15. *Indemnification.*

PMC shall indemnify and hold harmless Customer and its officers, employees, agents and representatives and defend any action brought against the same with respect to any third-party claim, demand or cause of action, to the extent that it is based upon a claim that the PMC Software infringes or violates any United States patent, copyright, trade secret, or other proprietary rights of a third party. Customer may, at its own expense, assist in such defense if it so chooses provided that PMC shall control such defense and all negotiations relating to the settlement of any such claim. Customer shall promptly provide PMC with written notice of any claim which

Customer believes falls within the scope of this section. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. In the event that the PMC Software or any portion thereof is held to constitute an infringement and its use is enjoined, PMC may, at its sole option and expense,

(i)     modify the infringing PMC Software so that it is non- infringing;

(ii)     procure for Customer the right to continue to use the infringing PMC Software; or

(iii)     replace the allegedly infringing PMC Software with suitable non-infringing software. Notwithstanding the foregoing, PMC shall have no obligation for any claims to the extent such claims result from:

(a)     modifications or alterations of the PMC Software made by or for Customer or any other Party that were not provided by PMC or authorized by PMC in writing;

(b)     use outside the scope of the Agreement;

(c)     use of a superseded or previous version of the PMC Software if infringement would have been avoided by the use of a newer version which PMC made available to Customer; or

(d)     use of the PMC Software in combination with any other software, hardware or products not supplied by PMC.

## 16. *No Agency*.

The Parties are independent contractors. Neither Party is an employee, agent, joint venturer or legal representative of the other Party for any purpose. Neither Party shall have the authority to enter into any legal or equitable obligation for the other Party. Under no circumstances may either Party hold itself out to have agency authority for the other Party. The Parties agree not to make false or misleading statements, claims or representations about the other Party, its products or the relationship between the Parties.

## 17. *Notices.*

Any notice, demand, request, consent, approval or other communication required or permitted hereunder to be served on or given to either Party hereto by the other Party shall be in writing and shall be deemed to have been served or given on the date of delivery if delivered in person to the Party named below, or if delivered by certified or registered mail, postage prepaid, return receipt requested, or other reputable delivery service (e.g., FedEx), if addressed as follows (or at such other addresses, and to the attention of such other person, as either Party may designate in writing from time to time):

If to Photon:     Photon Medical Communications, Inc.

Attention: Chris Radella, COO

6263 N. Scottsdale Rd., Suite 290

Scottsdale, AZ 85250

If to Customer: _____

_____

_____

_____

### 18. *Force Majeure*.

Excusable delays shall be governed by FAR 552.212-4(f).

### 19. *Severability.*

If the application of any provision or provisions of the Agreement to any particular set of facts or circumstances is held to be invalid or unenforceable by a court of competent jurisdiction, the validity of said provision or provisions to any other particular set of facts or circumstances shall not, in any way, be affected. Such provision or provisions shall be reformed without further action by the Parties to the extent necessary to make such provision or provisions enforceable when applied to that set of facts or circumstances.

### 20. *Amendment and Waiver*.

The Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each Party. The waiver by either Party of any of its rights or remedies hereunder shall not be deemed a waiver of such rights or remedies in the future unless such waiver is in writing and signed by an authorized officer of such Party. Such a waiver shall be limited specifically to the extent set forth in said writing.

### 21. *Assignment*.

Neither Party may assign the Agreement or any right or obligation under the Agreement, without the other Party's prior written consent, which consent will not be unreasonably withheld.

### 22. *Equitable Relief*.

Excusable delays shall be governed by FAR 552.212-4(f).

### 23. *General.*

(a)      Headings. The headings in this Agreement have been inserted solely for ease of reference and will not modify the meaning or scope of the provisions hereof.

(b)      No Waiver. Under no circumstances will the failure, negligence or tardiness of a Party regarding the exercise of a right or recourse provided for in this Agreement be considered a waiver of such right or recourse. Rights may only be waived in writing and the waiver of one (1) right will not be interpreted as the waiver of any other right.

(c)      Counterparts. This Agreement may be executed in one or more counterparts, and by the Parties hereto 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 similar) format and sent by e-mail shall be deemed original signatures.

(d)      Cumulative Rights. All rights set forth in this Agreement will be cumulative and not alternative.

(e)      Entire Agreement. The Agreement represents the final, complete and exclusive statement of the agreement between the Parties with respect to the subject matter of the Agreement, and all prior written agreements and all prior and contemporaneous oral agreements with respect to the subject matter hereof are merged herein. Without limiting the generality of the foregoing, no term or condition contained in any purchase order or other form of Customer heretofore or hereafter delivered to PMC which is in addition to or inconsistent with the terms and conditions set forth in this Agreement shall be binding upon PMC in any way, and all of such additional and/or inconsistent terms and conditions are hereby objected to and rejected. In any action to enforce the Agreement, the prevailing Party shall be entitled to recover costs

and reasonable attorneys' fees, in addition to any other relief to which the prevailing Party may be entitled.

### 24. *Governing Law and Jurisdiction*.

This Agreement will be construed in accordance with and governed by the Federal laws of the United States.

### 25. *Reserved*.

(a)

### 26. *Maintenance and Support*.

(a)　　Engagement of Support Services. PMC shall provide PMC Support as described in this Agreement to Customer for the specified PMC Products and for the Term of the Agreement. PMC reserves the right to withhold support, Patches, or New Product Releases if Customer fails to pay Fees according to the payment terms specified in each Schedule 1.

(b)　　Software Versioning. PMC Software is identified by a version number using the following format: [major release], [minor release], and [patch level], currently 3.0.1. New Product Releases incorporate all applicable defect corrections made in prior New Product Releases and Patches. At the time of each software release, the version number will be published and provided to Customer.

(c)　　Eligibility for Support. For each Release, PMC Software is "Eligible" for PMC Support according to the following schedule as measured from the date of each Release: for a period of one year PMC will issue a Patch for all verified software defects for which an acceptable workaround is not available; throughout the term of this agreement, provided Customer is current in all Software and Maintenance Payments.

(d)　　Exclusions from Support Services. PMC shall have no obligation to support PMC Software: (i) that has been altered or modified without written authorization by PMC; (ii) that is not installed on supported systems in accordance with PMC documentation or Minimum System Requirements as specified in Schedule 2; (iii) that is experiencing problems caused by Customer's negligence, misuse, or hardware malfunction; or (iv) that is being used inconsistent with PMC's documentation. PMC Support does not include information or assistance on technical issues related to the debugging, installation, administration, and use of Customer's computer systems and enabling technologies including, but not limited to, databases, computer networks, communications, hardware, hard disks, networks, and printers.

(e)　　Limited Warranty for PMC Support. PMC warrants that PMC Support will be performed with the same degree of skill and professionalism as is demonstrated by like professionals performing services of a similar nature, and in accordance with generally accepted industry standards, practices, and principles applicable to such support services.

(f)　　Customer Responsibilities. Customer shall provide commercially reasonable cooperation and full information to PMC with respect to PMC's furnishing of PMC Support.

(g)　　Enhancements and Upgrades. During the Term of PMC Support, PMC shall provide to Customer, free of additional charge, any and all enhancements and upgrades to the PMC Software that it makes generally available. PMC will perform general testing of enhancements and upgrades prior to distribution as a Release. Customer is responsible for installing and testing enhancements and upgrades on its systems.

(h)　　Tickets and Incidents. PMC shall respond to problems or questions ("Tickets") submitted to the PMC Support Help Desk ("Help Desk"). Each Ticket shall relate to a single problem or question and will count as an "Incident". Customer shall designate one (1) or more support contacts that are authorized to submit Tickets.

(i)　　Ticket Severity. Ticket severity ("Severity") shall be defined jointly with Customer and supported by business cases where necessary. Severity may be re-evaluated upon submission of a

workaround. Upon receipt of a properly submitted Ticket, PMC shall prioritize it in accordance with the following guidelines:

(ii)     Blocking – A "Blocking" Ticket is a critical problem within a Production Instance that severely impacts the Customer's use of PMC Software, such as a loss of data, or a situation where PHI data is compromised by PMC, such that the critical problem causes significant impact to portions of the Customer's business operations and productivity. PMC will use continuous efforts to provide a resolution for any Blocking Ticket as soon as it is technically possible.

(iii)     Non-Blocking – A "Non-Blocking" Ticket is any other problem within the PMC Software where the Customer's Production Instance is substantially functioning. This includes situations where the Customer's system is operating but in a reduced capacity, or for which PMC has provided a reasonably effective workaround. Problems existing in a Non-Production Instance that would otherwise qualify as a Blocking Ticket if they were in a Production Instance qualify as Non-Blocking. PMC will use reasonable efforts during its "Help Desk Hours" (as defined in the Matrix below) to provide a resolution for any Non-Blocking Ticket as soon as is commercially reasonable.

(iv)     Enhancement Request – An Enhancement Request ("ER") is a recommendation for a future product enhancement, or a modification to add official support and documentation for an unsupported or undocumented feature, or a feature that does not currently exist in the PMC Software. PMC will take ERs into consideration in the product management process but has no obligation to deliver enhancements based on any ER.

(i)     Support Services Matrices. Customer is entitled to and PMC shall provide PMC Support corresponding to the level of support specified in the Agreement as defined by the Support Services Matrices ("Matrices") below. In situations where support services differ from the Matrices, the support services specified in the Agreement shall prevail:

(i)     Support Services Matrix: Blocking Tickets

| Support Description | |
|---|---|
| Help Desk Access | Email outlining description of problem/issue |
| Blocking Ticket Support Hours | Email description and Direct Phone Call to Implementation Team Member |
| Ticket Response Time | 1 Business Day |
| Ticket Resolution Target | 1 Week |
| Blocking Ticket Patch Target | Patch Release |
| Incidents | 5 days |
| Developer Support | TBD by problem/issue |

(j)     Service Level Commitments. PMC will provide PMC Support to Customer based on the matrix above for Blocking Tickets. Service level commitments ("Commitments") specified in the matrix are further defined as follows:

(i)     Ticket Response Time – "Ticket Response Time" is a Commitment by PMC to Customer and represents the maximum amount of time during Help Desk Hours it will take for PMC to respond to and initiate work on a Ticket. Customer needs to email Help Desk and Implementation Team Member assigned to the implementation, and then initiate a call to the Implementation Team Member by a designated Customer System Administrator, as referenced in Section 1, paragraph (o). At that time, the Customer System Administrator and the PMC Implementation Member will begin the process of solving the blocking issue. Prior to Photon system implementation, Customer will be provided cell phone numbers of Photon Implementation Team members with an escalation priority call list. These phone numbers will only be at the disposal of Customer's Photon System Administrators and other designated members of Customer's senior management. The cell phone numbers are not to be distributed to the Photon User Base.

(ii)     Ticket Resolution Target – "Ticket Resolution Target" is a Commitment that

represents the maximum amount of time during Help Desk Hours it should take for PMC to resolve a Blocking Ticket. As the full resolution of a Ticket will vary based on the nature of the underlying issue and may involve external dependencies, PMC will target resolution as soon as possible.

        (iii)     Blocking Ticket Patch Target – "Blocking Ticket Patch Target" is the estimated time that PMC should need to issue a Patch for a Blocking Ticket, which: (i) has been confirmed as being caused by a verified and reproducible defect in the PMC Software; and (ii) for which there is no acceptable workaround.

      (k)     Support Services Matrix: Non-Blocking Tickets

| Support Description | |
|---|---|
| Help Desk Access | Email outlining description of problem/issue |
| Non-Blocking Ticket Support Hours | Email description |
| Ticket Response Time | 2 Business Days |
| Ticket Resolution Target | 2 Weeks |
| Non-Blocking Ticket Patch Target | Next Release or sooner |
| Incidents | 20 days |
| Developer Support | TBD by problem/issue |

As described in Section 26, "Maintenance and Support", paragraph i, "Severity", efforts to resolve Non-Blocking Tickets will be addressed as soon as commercially reasonable. In all instances, first priority will be given to issues involving Blocking Tickets, as outlined in section (k) above.

IN WITNESS WHEREOF, the Parties, by their duly authorized representatives, have executed this Agreement as of the Effective Date. The signatory for each Party hereby certifies and warrants that he or she has the actual authority to bind the respective Party to this Agreement.

## *Photon Medical Communications, Inc.*

_____

By: _____

Title: _____

Date: _____

CUSTOMER:

_____

By: _____

Title: _____

Date: _____

<u>Schedule 1 – Minimum System Requirements</u>

<u>Mobile Devices</u>

Users of mobile devices that want access to the Photon Medical Communications system must be using a smartphone or tablet running on one of the following operating systems:

- Android 4.4 (Kit Kat) or Higher
- iOS 8.0 or Higher

## *Desktop Computers*

Desktop computers access the Photon Medical Communications system via a web browser. Accepted browsers and versions for the various platforms are as follows:

- Internet Explorer v10 or Higher
- Google Chrome v40 or Higher
- Safari 5.0 or Higher
- Firefox 9.0 or Higher
- Opera 11.5 or Higher

Computers should have 4GB of memory minimum along with a modern operating system (Windows 7 or Higher, or Mac OS X Snow Leopard or higher).

<u>In-Hospital WiFi Requirements</u>

- 802.11n or higher speeds
- SSID hidden, password protected, employee access only
- No splash screen for access
- Access to outside internet is all that is needed (does not need internal network access)
- Hospital-wide access

## *Servers*

Photon Medical Communications runs a portion of our software inside the hospital network to facilitate communications to HL7 data sources and PACS imaging. For such a server (whether physical or virtual), the minimum system requirements are:

- Windows Server 2008 R2 or higher
- 16 GB of RAM
- 1 TB Hard drive
- 2GHz Intel processor or faster
- 4 processing cores

## *Updates*

Photon Medical Communications reserves the right to change these requirements with future releases as is needed to keep the system up to date with current 3rd party vendor software and hardware.

<u>Schedule 3</u>

<u>Installation, Integration and Implementation/Training Services</u>

All Travel and Expenses (T&E) incurred for the purpose of supporting all of the Installation, Integration and Training/Implementation Services below, for PMC Software for Customer, will be additional to the Services and the Associated Fees below, will be billed separately in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable, Customer shall only be liable for such travel expenses as approved by Customer and funded under the applicable ordering document. The Services provided as part of this Schedule are described below and will be subject to the performance by Customer of its obligations, and are:

(a)     <u>Installation Services and the Interface Server</u>: Installation services include:

(i)     If Customer elects to have a physical server installed behind its firewall, procurement, configuration and installation of the Interface Server with an Interface Engine

(ii)     If Customer elects to use a virtual server behind its firewall, configuration of the virtual Interface Server with an Interface Engine

(iii)     Setting up, Testing and Validation of VPN connectivity, as well as funding it for the duration of the Agreement.

(b)     <u>Integration Services:</u> PMC shall provide system Integration Services that will establish interfaces between PMC Software and all of the Customer's relevant information systems "feeds" as mutually agreed upon by the Parties.  Integration Services will include:

(i)     Determining, obtaining and verifying the quality of the data content in the system feeds obtained from Customer hospital information systems, are accurate and complete

(ii)     Programming, testing, and troubleshooting efforts required to ensure technical integration and sustainability of the customer's system feeds

(iii)     Validating that the Photon application built for Customer has successfully integrated with all of the relevant hospital information system feeds and quality testing to insure that the feeds are ready for production.

(c)     <u>Implementation/Training Services:</u> PMC will train up to 12 System Administrators (SA) and User Managers (UM) and up to 100 physicians/caregivers (End Users) during the initial training period, hereafter referred to as "<u>Initial Training</u>".  PMC's training process is based on the "Train the Trainer" approach where PMC trainers thoroughly train Customer's System Administrators and User Managers, including certifying User Managers to be Photon Trainers, who then become Customer's primary trainers for all future Photon End Users in the Customer hospital, or for community physicians/caregivers that Customer would like to include as part of its Photon End User network.  The standard PMC Implementation and Training Project takes up to 12 weeks, and in addition to initial training of System Administrators, User Managers and End Users from selected specialties; PMC conducts Project Steering Committee meetings with Customer's Executive Management at least 3 times over the 12 week period to ensure that project milestones and training objectives are achieved, and that any issues impacting successful project completion are identified and resolved as soon as possible.  These Steering Committee meetings augment the weekly project status meetings being conducted by the Implementation Teams of both the Customer and PMC.

<u>Training services to be provided as part of "Initial Training" include:</u>

(i)      An in-depth review of Photon application system security features, functions and capabilities for System Administrators and Customer Executive team

(ii)      Dedicated training sessions for both System Administrators and User Managers by PMC physician/non-physician training staff members

(iii)      Certification by PMC of Customer's User Managers that will be designated to train new Photon End Users after "Initial Training" of up to 100 physicians/caregivers and 12 SA/UM has been completed by PMC and the User Managers

(iv)      On-site training sessions for the initial group of up to 100 physicians/caregivers from Customer's Emergency Department, Hospitalists' group, and "On-Call Specialists", and unless otherwise mutually agreed to in writing by Customer and PMC, no other specialties will be included as part of "Initial Training."

(v)      Training Executive Project Sponsor/staff on accessing, interpreting and using Photon Usage Reports to identity areas of opportunity related to application adoption and usage

(vi)      Training materials will be available online to Customer by PMC throughout the term of this Agreement.