



KACHEMAK EMERGENCY SERVICES

53048 Ashwood Ave • Homer, Alaska 99603

PHONE: (907) 235-9811 • FAX: (907) 235-8034

www.kachemakemergency.org • KES@Borough.Kenai.AK.US

ROBERT W. CICCARELLA
CHIEF

To: Mike Navarre, Mayor

Thru: Valentina Sustaita, Purchasing and Contracting Director *V. Sustaita*

From: Bob Ciccarella, Fire Chief *Bob Ciccarella*

Date: August 22, 2017

Subject: Authorization to Sole Source for Operative IQ Inventory Management System in Partnership with Bound Tree Medical Supply (A Distributor)

Under section 5.28.280A of the Borough code, KESA is seeking authorization to enter into a contract for the software licensing of Operative IQ's On-line Inventory Management System through Bound Tree Medical Supply.

KESA has been using this software for the past four (4) years and has all of the Medical Supply Inventory, equipment inventory and Narcotics Tracking stocked by KESA monitored by this system. All of KESA's equipment and supplies are automatically tracked down to each individual pocket in every kit on every unit, apparatus or carried by each responder. After demonstrating the software to Dr. Levy, he feels this system means of tracking Narcotics is so effective that he is requiring Anchorage Fire Department and other KPB Service areas to use this inventory system as well.

The online software however proprietary, utilizes a Microsoft SQL Database so no data would be lost in the event the company dissolves. This is highly unlikely as it is currently the number one Emergency Services Inventory Tracking Software on the market today.

We are requesting Bound Tree/Operative IQ as the sole source vendor for this purchase as they are currently the only source for this proprietary system.

I respectfully request your approval for this purchase in the amount of \$6,000.00 per year for three years renewable annually. Funding for this project is in account number: 212.51810.00000.43011

Mike Navarre
Mike Navarre, Mayor

8/29/17
Date

**FINANCE DEPARTMENT
ACCOUNT VERIFIED**

Acct. No. 212.51810.00000.43011

Amount \$6,000.00

By: *BA* Date: 8/25/17

BoundTree medical Operative IQ Licensing Agreement

Customer

Name: Kachmak Emergency Services
Address: 53048 Ashwood Ave.
Homer AK, 99603
Attention: Jeanette Johnson
E-mail: jjohnson@kpb.us

Company

Bound Tree Medical, LLC
5000 Tuttle Crossing Blvd.
Dublin, OH 43016
Mark Dougherty
Mark.Dougherty@sarnova.com

This Licensing Agreement (the "Agreement") is hereby entered this _____ day of _____, 2017 (the "Effective Date") by and between Company and Customer (referred to herein as the "Parties" or "Party").

1. **Scope.** The terms and conditions below represent the terms and conditions under which Company will grant a license to Customer for the Operative IQ Mobile Inventory Management System for Emergency Medical Services (the "Software"). The term of this Agreement shall be as if the Effective Date and remain in full force and effect for 3 year(s) after the Effective Date.
2. **Term.** The term of this Agreement shall become effective as of the Effective Date and shall remain in full force and effect for 3 year(s) after the Effective Date unless otherwise terminated in accordance with the provisions set forth herein.
3. **Grant of Non-Exclusive License.** Subject to the terms and conditions of this Agreement, Company hereby grants to Customer a non-exclusive irrevocable license to the Software during the Term (the "License").
4. **Licensing Fee.** The fee for each License shall be as specified on Exhibit A, per Contract Year, payable as of the respective Contract Year. For this purpose a "Contract Year" is the Twelve (12) consecutive month period beginning on the Effective Date and each succeeding Twelve (12) month consecutive 12 month period during the Term. If this Agreement ends prior to the end of a Contract Year, the annual licensing fee will be pro-rated to reflect the number of months in the final Contract Year. The number of licenses issued under this Agreement is as specified in Exhibit A.
5. **Software Accessories.** Customer may purchase Software Accessories needed to operate the software at the prices specified on Exhibit A. The Software Accessories shall be payable at the time of purchase.
6. **Set Up and Training.** Set up of the Product shall be performed by the software developer at the price specified on Exhibit A.
7. **Warranties.** Products licensed by Company and Software Accessories carry only those warranties made for them by their manufacturers. The duration of the warranty shall extend for the length of time set by the manufacturer. THERE ARE NO OTHER EXPRESSED OR IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. COMPANY'S SOLE OBLIGATION AND CUSTOMER'S EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY SHALL BE, AT COMPANY'S OPTION, TO REPAIR OR REPLACE THE PRODUCT. COMPANY SHALL NOT BE LIABLE FOR PUNITIVE, SPECIAL, PROXIMATE, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES. NOTWITHSTANDING THIS WARRANTY, CUSTOMER SHALL BE

RESPONSIBLE FOR ALL REGULAR SERVICE AND MAINTENANCE OF PRODUCTS AND SOFTWARE ACCESSORIES. IN NO EVENT WILL COMPANY BE LIABLE FOR ANY DAMAGES OR NONCONFORMITY OF PRODUCTS AND SOFTWARE ACCESSORIES TO THE EXTENT CAUSED EITHER DIRECTLY OR INDIRECTLY BY CUSTOMER OR ITS DESIGNATED REPRESENTATIVES, EMPLOYEES, CONTRACTORS, OR AGENTS.

8. **Force Majeure.** In the event that either Party is prevented from performing or is unable to perform any of its obligations under this Agreement (other than payment of amounts due hereunder) due to any Act of God, fire, casualty, flood, war, strike, lockout, epidemic, destruction of facilities, riot, insurrection, or any other cause beyond the reasonable control of the Party invoking this Section, such party's performance shall be excused and the time for the performance shall be extended for the period of the delay or inability to perform due to such occurrences.
9. **Confidentiality.** Neither Party may disclose the terms and conditions of this Agreement to a third party without the prior written consent of the other, except as required by law or as necessary to perform its obligations under this Agreement. Notwithstanding the foregoing, Company may use certain Customer information as input data in a database where Customer's identity shall be kept anonymous. Neither party will make any press release nor other public announcement regarding this Agreement without the other party's prior written consent except as required under applicable law or by any governmental agency.
10. **Miscellaneous.** Both Parties shall comply with all laws, rules, and regulations applicable to this Agreement. All purchases under this Agreement are for Customer's "own use" as such term is defined in judicial or legislative interpretation. This Agreement is the entire agreement between the parties with regard to the subject matter of this Agreement. No amendment of the terms of this Agreement will be binding on either party unless reduced to writing and signed by an authorized employee of the party to be bound.
11. **Termination.** Each Party reserves the right to terminate the Agreement if: (a) the other Party ceases to function as a going concern in the normal course of business; (b) the other Party commits or suffers any act of bankruptcy or insolvency; (c) upon notice of termination after notice of a material breach has been given and such breach is not cured within thirty (30) days following the notice of breach. Company may terminate this agreement at any time upon written notice to the customer.
12. **Relationship of Parties.** Each Party is an independent contractor of the other. Neither Party shall be the legal agent of the other for any purpose whatsoever and therefore has no right or authority to make or underwrite any promise,

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warranty, or representation, to execute any Agreement, or otherwise to assume any obligation or responsibility in the name of or on behalf of the other party, except to the extent specifically authorized in writing by the other Party.

13. **Assignment.** This Agreement and the rights and obligations hereunder shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns; provided that no Assignment, sale or other assignment of this Agreement can occur unless either (a) the transfer occurs by way of merger, reorganization, consolidation, amalgamation, or as part of a transfer of all or substantially all of the assigning party's assets, or (b) then non-transferring Party consents to the transfer. In the event of such a transfer, the transferring Party agrees to secure consent from the transferee that it will assume and perform all obligations of the transferring Party under this Agreement. Supplier or Company shall give the other written notice of any anticipated assignment of the Agreement as soon as administratively practicable after such information may first be made public.
14. **Notices.** All notices or other communications that are required or permitted hereunder shall be in writing and delivered personally, sent by facsimile (and such facsimile must be promptly confirmed by personal delivery, registered or certified mail or overnight courier as provided herein), sent by nationally-recognized overnight courier or sent by registered or certified mail, postage prepaid, return receipt requested, to the addresses first specified hereinabove, or to such other address as the Party to whom notice is to be given may have furnished to the other Party in writing in accordance herewith, to the attention of the Chief Executive

Operative IQ Licensing

Officer. In addition, a copy of any notice to Company must be sent to General Counsel, Sarnova, Inc., 5000 Tuttle Crossing Blvd., Dublin, OH 43016 (such copy shall not constitute legal notice).

15. **Headings.** The headings of this Agreement are for convenience only and shall not affect the meaning of the terms of this Agreement.
16. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, excluding any conflicts or choice of law rule or principle that might otherwise refer construction or interpretation of this Agreement to the substantive law of another jurisdiction.
17. **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of either Party under this Agreement will not be materially and adversely affected thereby such provision shall be fully severable and the remaining provisions of this Agreement shall remain in full force and effect to the fullest extent permitted by applicable law, each Party hereby waives any provision of law that would render any provision prohibited or unenforceable in any respect.
18. **Waiver.** The failure of either Party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other Party.
19. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Company Agreement as of this ___ day of ___, 2017

Customer

By:

Name: VALENTINA SUSTAITA

Title:

PURCHASING & CONTRACTING
DIRECTOR

Bound Tree Medical, LLC

By:

Name:

Title:

"To the extent any item is provided at no charge, it is deemed to be provided at a discount on the full price of such item. These discounts are governed by the terms of a separate rebate agreement between the Parties. The parties acknowledge that the rebate provided under the terms of this Agreement constitutes a "discounts or other reductions in price" under section 1128 B(b)(3)(A) of the Social Security Act 42 U.S.C. 1320a-7b(b)(3)(A). Accordingly, Customer shall disclose the discount to any state or federal program that provides cost or charge-based reimbursement to the extent required by law.