EMSYSTEMS® USE AGREEMENT

THIS AGREEMENT is entered into and effective as of September 18, 2015 (the "Effective Date"), between MONTEREY COUNTY HEALTH DEPARTMENT located at 1270 Natividad Road, Salinas, CA 93906 ("Client"), and EMSYSTEMS, LLC, a Delaware limited liability company located at 111 West Pleasant Street, Suite 202, Milwaukee, Wisconsin 53212 ("EMSYSTEMS, LLC" and, together with Client, each a "Party" and collectively the "Parties").

RECITALS

A.   EMSYSTEMS, LLC has applications that provide resource management, patient tracking, and credentialing solutions that enhance emergency preparedness and response to medical emergencies, mass casualty events and public health incidents.

B.   EMSYSTEMS, LLC desires to provide to Client and its Authorized Users, and Client desires, on behalf of its Authorized Users, to obtain from EMSYSTEMS, LLC, remote access to EMSYSTEMS, LLC related services.

AGREEMENTS

In consideration of the Recitals and agreements that follow, the Parties agree as follows:

1. Definitions. Unless defined elsewhere in this Agreement, capitalized terms used in this Agreement will have the meanings set forth in Schedule 1.

2. System Access and Services.

(a) System Access. Subject to the T&Cs and this Agreement and upon payment of all Fees due hereunder, EMSYSTEMS, LLC hereby grants to Client and each Authorized User a limited, non-exclusive, non-transferable right to Use the System during the Term.

(b) User Equipment. Client shall obtain, operate, support and maintain all User Equipment, at its sole expense.

(c) Services. EMSYSTEMS, LLC will provide Client with use of the System and any Implementation Services and Training Services as set forth on Schedule 2. EMSYSTEMS, LLC shall perform such other services and provide such other modules as the Parties may mutually agree in writing by executing a revised or amended Schedule 2 specifying the services, modules, term and all applicable fees.

3. Fees; Payments.

(a) Fees. As consideration for Use of the System and the services provided by EMSYSTEMS, LLC under this Agreement, Client shall pay to EMSYSTEMS, LLC the Fees. EMSYSTEMS, LLC shall provide an invoice to Client for all Fees incurred by Client as set forth on Schedule 2. EMSYSTEMS, LLC shall submit to the Contract Administrator an invoice on a form acceptable to Client. If not otherwise specified, EMSYSTEMS, LLC may submit such invoice periodically or at the completion of services, but in any event, no later than 30 days after completion of services. The invoice shall set forth the amounts claimed by EMSYSTEMS, LLC for the period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. Client shall certify the invoice, either in the requested amount or in such other amount as Client approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. Payment is due within thirty (30) days of receipt by the County Auditor-Controller of a certified invoice and must refer to the invoice number.

(b) Adjustment. EMSYSTEMS, LLC may adjust the amount of any and all Fees upon 90 days' prior written notice to Client.

(c) Expenses. Client will pay or reimburse EMSYSTEMS, LLC for reasonable out-of-pocket costs and expenses (including, without limitation, travel and lodging expenses) incurred by EMSYSTEMS, LLC and approved in advance by Client, and in accordance with the County approved Travel Policy.

(d) Taxes. Client shall pay any federal, state, local or other sales or services taxes or assessments (exclusive of any taxes based on the

net income of EMSYSTEMS, LLC) levied or assessed in connection with this Agreement and which legally may be imposed against Client.

(e) Overdue Payments. If Client fails to pay to EMSYSTEMS, LLC any Fees as and when such Fees are due: (i) EMSYSTEMS, LLC may suspend all Use of the System and the performance of any other services which EMSYSTEMS, LLC is then performing for Client; and (ii) EMSYSTEMS, LLC may terminate this Agreement as set forth in section 7.

4. Client and Authorized User Responsibilities.

(a) Operational Responsibilities. During the Term, Client shall ensure that each Authorized User shall:

(i) obtain and maintain its User Equipment;

(ii) comply with all security measures required by EMSYSTEMS, LLC;

(iii) comply with this Agreement and the T&Cs;

(iv) designate a Contact Person to work with EMSYSTEMS, LLC to implement and maintain its Use of the System; and

(v) ensure that no virus or other disruption to the System occurs due to any action or failure to act.

(b) Accurate Data. EMSYSTEMS, LLC shall not be responsible for the accuracy of any Client Data or liable to Client or any Authorized User or third party for any Damages resulting from inaccurate Client Data. EMSYSTEMS, LLC shall not change or alter any Client Data at any time, at any Client or Authorized User's request or otherwise.

5. Data Security, Confidentiality and Access.

(a) Ownership of Client Data. As between EMSYSTEMS, LLC and Client, all Client Data is and shall remain the property of Client. EMSYSTEMS, LLC shall not, without Client's written consent, use or disclose Client DATA other than in the performance of its obligations under this Agreement.

(b) Access to Client Data. Client and Authorized Users may Use the Software as set forth in Schedule 2 except (i) where EMSYSTEMS, LLC places limitations on such Use; (ii) during any scheduled

System downtime; (iii) during a period of repair or maintenance of the System or (iv) when EMSYSTEMS, LLC has suspended or terminated Use of the System as permitted under this Agreement.

(c) Safeguarding Client Data in the System. During the Term, EMSYSTEMS, LLC shall use software or devices which (i) require Authorized Users' end users to enter user identification codes and passwords prior to gaining access to the System, (ii) track the addition and deletion of Authorized Users' end users and (iii) control access by any end user to areas and features of the System as designated by the applicable Authorized User.

(d) Recovery of Client Data. If any Client Data is lost or damaged due to the acts or omissions of EMSYSTEMS, LLC while resident in the System, EMSYSTEMS, LLC shall use commercially reasonable efforts to assist in replacing or regenerating such data.

(e) Confidential Information.

(i) General Requirements and Exclusions. Client shall not disclose EMSYSTEMS, LLC Confidential Information without the prior written consent of EMSYSTEMS, LLC except [a] to accountants, banks, financing sources, lawyers and related professionals, and [b] in connection with the enforcement of this Agreement and shall maintain the confidentiality of such information in accordance with Law.

(ii) Obligations. Client shall use, and shall ensure that each Authorized User uses, its best efforts to prevent disclosing the EMSYSTEMS, LLC Confidential Information to third parties; provided, however, that Client may disclose such information to its employees and authorized agents who have a need to know such information and who have agreed to the obligations to preserve the confidentiality of such information as set forth in this Agreement. Client shall be responsible for any breach by any Authorized User, employee or agent of any such confidentiality obligations. Following the termination of this Agreement, Client shall, and shall ensure that each Authorized User shall, promptly return to EMSYSTEMS, LLC all

tangible embodiments of EMSYSTEMS, LLC Confidential Information.

6. Limited Use of the System.

(a) Client Rights to Use.

(i) Client shall not, and shall ensure that each Authorized User and End User shall not:

[a] use the System for a service bureau application without EMSYSTEMS, LLC's prior written consent;

[b] use any screen or function of the Software that is not necessary for Client's or such Authorized User's coordination of medical services or publishing of health information;

[c] access, modify, adapt, translate or create derivative works based on any part of the Software or the System;

[d] commercially exploit, market, license or distribute access to or use of the System;

[e] challenge EMSYSTEMS, LLC's Rights in the System;

[f] assist or cooperate with any third party in challenging EMSYSTEMS, LLC's Rights to the System; or

[g] remove any copyright, trademark or other notices that appear on or in the System.

(b) EMSYSTEMS, LLC Ownership Rights. EMSYSTEMS, LLC shall retain all Rights in the System and neither Client nor any Authorized User shall have or obtain any such Rights.

(c) Software Updates. EMSYSTEMS, LLC may enhance or modify the System in its sole discretion. EMSYSTEMS, LLC will provide notice to Client prior to implementation of enhancements or modifications of the System that affect Client or Authorized Users. Client acknowledges and agrees that EMSYSTEMS, LLC retains all Rights in any modifications to the System, including but not limited to modifications resulting from requests for changes made by Client or any Authorized User.

7. Indemnification

(a.) EMSYSTEM, LLC shall indemnify, defend, and hold harmless the County of Monterey (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by EMSYSTEMS,LLC, and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the County. The EMSYSTEMS,LLC shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which EMSYSTEMS, LLC is obligated to indemnify, defend and hold harmless the County under this Agreement.

(b.)The County shall indemnify, defend, and hold harmless EMSYSTEMS, LLC, its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by the County and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by EMSYSTEMS, LLC. The County shall reimburse EMSYSTEMS, LLC for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the County is obligated to indemnify, defend and hold harmless EMSYSTEMS, LLC under this Agreement.

8. Term and Termination.

(a) Term. Unless terminated as set forth in this section 8, the term of this Agreement shall (i) commence on the Effective Date; (ii) continue until the first anniversary of the Commencement Date (the "Initial Term"). The Initial Term of this Agreement is September 18, 2015 through September 20, 2018.

(b) Termination . Either party may terminate this Agreement upon thirty (30) days prior written written notice to the other party.

(c) Termination for Cause by EMSYSTEMS, LLC. EMSYSTEMS, LLC may terminate this Agreement upon the occurrence of any of the following events:

(i) If Client fails to pay any amount due to EMSYSTEMS, LLC under this Agreement, within 45days after written notice of the nonpayment is given by EMSYSTEMS, LLC to Client; or

(ii) If Client defaults in the due performance or satisfaction of any material covenant under this Agreement and fails to remedy such default within 30 days of receipt by Client of written notice from EMSYSTEMS, LLC of such default.

d)) Termination for Cause by Client
Client may terminate this Agreement upon the occurrence of the following event:

(i) If EMSYSTEMS, LLC defaults in the due performance or satisfaction of any material covenant under this
Agreement and fails to remedy such default within 30 days of receipt by EMSYSTEMS, LLC of written notice from
Client of such default.

(e) Termination for Bankruptcy. Either Party may terminate this Agreement immediately upon the occurrence of a Bankruptcy Event affecting the other Party by providing written notice to the other Party.

(f) Effect of Termination. Upon expiration or termination of this Agreement for any reason:
(i) Client will pay EMSYSTEMS, LLC all Fees accruing through the date of termination;
(ii) EMSYSTEMS, LLC shall have no further obligation to Client or any Authorized User under this Agreement or otherwise; and (iii) all Use of the System by Client and all Authorized Users shall immediately terminate. Notwithstanding the foregoing, Client or Authorized Users may export Client Data prior to the termination date.

(g) Termination of Authorized User. Either of Client or EMSYSTEMS, LLC may, immediately upon notice to the other Party, terminate any Authorized User or End User for violation of the T&Cs.

(h) Termination for Lack of Government Funding. The Client's payments to EMSYSTEMS, LLC under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the Client's purchase of the

indicated quantity of services, then the Client may give written notice of this fact to EMSYSTEMS, LLC, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the Client may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

9. Warranty, Limitations.

(a) Warranty. EMSYSTEMS, LLC warrants that it will use commercially reasonable care in making the System available for Use and in performing any other services to be provided by EMSYSTEMS, LLC under this Agreement.

(b) "As is, where is". Except as provided in section 9(a), the parties acknowledge and agree that the system is being provided "as is, where is" and client bears complete and sole liability for Client's use of and reliance on the system, even if such use or reliance were to produce incorrect information or erroneous result.

(c) Voidance of Warranty. The warranty set forth in section 9(a) shall be void if any breach of such warranty or failure of the System results from Client's or authorized users' modifications to the System or improper use of the System.

(d) Disclaimer of Warranties. Except for the warranty provided in section 9(a), EMSYSTEMS, LLC hereby disclaims all other warranties, whether statutory, express, or implied, including, without limitation, warranties of merchantability, fitness, for a particular purpose or use, design, condition, capacity and performance.

(e) Limitation of Remedies. Client's sole and exclusive remedy for any and all causes of action and claims, including, without limitation, breach of contract, breach of warranty, negligence, strict liability, misrepresentation or other torts, shall be limited to the repair of that portion of the System that does not meet the warranty. For all causes of action or claims for which repair of the System is not possible EMSYSTEMS, LLC'S aggregate liability for damages shall not exceed 90 times the average daily charge. EMSYSTEMS, LLC shall not be liable to Client, any authorized user or any third party for any other damages, regardless of whether

EMSYSTEMS, LLC knew or should have known of the possibility thereof.

(f)   Acknowledgment. Client and EMSYSTEMS, LLC expressly acknowledge that the limitations and remedy contained in this section 9 represent their express agreement with respect to the allocation of risks between them as related to the amount of the consideration each is to receive under this Agreement, and each of Client and EMSYSTEMS, LLC fully understands and irrevocably accepts such limitations and remedy.

(g) Force Majeure. EMSYSTEMS, LLC shall not be liable to Client for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by a Force Majeure Event. If a Force Majeure Event occurs, EMSYSTEMS, LLC shall be excused from further performance or observance of the obligations so affected for as long as the Force Majeure Event remains in place. Client shall continue to pay all Fees due under this Agreement upon the occurrence of any Force Majeure Event unless the Force Majeure Event continues for more than ten business days, in which event the obligation of Client to pay such amounts shall be suspended until such time as the Force Majeure Event ends and services are resumed or this Agreement is terminated.

10. General.

(a) Notices. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be delivered in person, by facsimile or sent by registered mail, charges prepaid, to the address set forth above or such address as Party may provide in writing to the other Party.

(b) Relationship of the Parties. The relationship established between the Parties by this Agreement during its Term shall be solely that of vendor and vendee. Under no circumstances shall the contractual relationship between the Parties be deemed or construed as one of agency, partnership, joint venture, employment or otherwise, except for the vendor/vendee relationship.

(c) Severability. If any provision shall be held to be invalid or unenforceable for any reason, the Parties agree that such invalidity or unenforceability shall not affect any other provision of this Agreement, the remaining provisions shall remain in full force and effect and any court of competent jurisdiction may so modify the objectionable provision as to make it valid and enforceable.

(d) Assignment. Neither Party may assign or transfer any of its Rights or obligations under this Agreement, whether in whole or in part, without the prior written consent of the other Party; provided, however, that EMSYSTEMS, LLC may assign this Agreement to any third party that acquires all or substantially all of the assets or business operations of EMSYSTEMS, LLC by purchase, merger or otherwise.

(e) Survival. In addition to those provisions hereof which, by their terms, provide for survival following the termination of this Agreement, the provisions of sections 5, 6, 7(e), 8 and 9 shall survive the termination of this Agreement.

(f) Entire Agreement. This Agreement, the T&Cs and the Schedules attached hereto constitute the entire agreement between the Parties and supersede all prior agreements, understandings and arrangements between the Parties with respect to the subject matter thereof. Any additional or different terms or conditions in a Party's or any Authorized User's purchase orders, quotations, acknowledgments, invoices, licenses or other communications to the other Party, whether or not such terms or conditions materially alter this Agreement, shall (a) be deemed objected to by the other Party without need for further notice of objection, (b) be of no force or effect and (c) not, in any circumstance, be binding upon the other Party unless expressly accepted by the other Party in writing.

(g) Compliance with Applicable Laws. In carrying out its obligations and responsibilities under this Agreement, each Party agrees to observe and comply with all Laws.

(h) Governing Law; Venue. This Agreement shall be construed, interpreted and enforced in accordance with, and the respective Rights and obligations of the Parties shall be governed by, the Laws of the State of California without regard to the principles of conflicts of law, and each Party hereby irrevocably and unconditionally submits to

the jurisdiction of the state and federal courts of California.

(i) <u>Waiver</u>. The failure of any Party to insist, in any one or more instances, upon the performance of any term or condition of this Agreement shall not be construed as a waiver or relinquishment of any right granted hereunder or the future performance of such term or condition.

(j) <u>Priority</u>. The attached Schedules form part of this Agreement. If there is any apparent conflict or inconsistency between the provisions set forth in the body of this Agreement and the provisions set forth in any Schedule, the provisions set forth in the Agreement shall prevail.

(k) <u>Remedies</u>. Each Party shall be entitled to exercise any legal, equitable or other rights or remedies to which it is entitled, including, without limitation, the right to obtain injunctive relief or specific performance with respect to the violation of any term or condition of this Agreement. Each such remedy shall be cumulative and not exclusive.

EMSystems, LLC

By:_____
      Vice President

Date: _____

County of Monterey

By:_____
     Department Head
Date: _____

By:_____
   Contracts/Purchasing Officer
Date: _____

By:_____
     County Counsel
Date: _____

By:_____
     Auditor/Controller
Date: _____

By:_____
     Risk Management
Date: _____

By:_____
     Information Systems
Date: _____

Schedule 1

Definitions

"Authorized User" means a health care provider, health department or other entity authorized by Client to Use the System to coordinate emergency services and health information in the Territory, and any employee of Client or an Authorized User whose job function requires Use of the System.

"Bankruptcy Event" means a Party: (i) is dissolved, becomes insolvent, generally fails to pay or admits in writing its inability generally to pay its debts as they become due; or (ii) files a petition in bankruptcy or institutes any action under federal or state law for the relief of dollars or seeks or consents to the appointment of an administrator, receiver, custodian or similar official for the wind-up of its business (or has such a petition or action filed against it and such petition, action or appointment is not dismissed or stayed within 30 days).

"Client Data" means data input by Client or Authorized Users into the System and derivative data resulting from the processing of such input data by the System.

"Commencement Date" means the date EMSYSTEMS, LLC notifies Client that Authorized Users may begin to Use the System.

"Contact Person" means a person qualified by education and training to use and understand the applicable User Equipment and the System.

"Damages" means any indirect, incidental or consequential damages, including, without limitation, lost profits or any other obligations or liabilities, including, but not limited to, obligations or liabilities arising out of breach of contract or warranty, negligence or other tort or any theory of strict liability, sustained or incurred by Client or any Authorized User or third party and including attorney's fees with respect to Use of or inability to Use the System or the acts or omissions of EMSYSTEMS, LLC.

"EMSYSTEMS, LLC Confidential Information" means (i) all information of EMSYSTEMS, LLC marked "confidential," "restricted," "proprietary" or with a similar designation; (ii) the Software; (iii) know-how, technical information, data or other proprietary information relating to the System; (iv) all source codes, object codes, software programs, computer processing systems and techniques employed or used by EMSYSTEMS, LLC; (v) any related items such as specifications, layouts, flow charts, manuals, instruction books and training materials, programmer, technical and user documentation, and any and all upgrades, enhancements, improvements or modifications to the foregoing; and (vi) the terms and conditions of this Agreement; provided, however, that EMSYSTEMS, LLC Confidential Information shall not include information that (i) was in the public domain at the time of disclosure; (ii) after disclosure is published or otherwise becomes part of the public domain through no fault of Client; or (iii) was received by Client from a third party who had a lawful right to disclose such information to Client.

"Equipment" means the computers and other hardware (including, but not limited to, operating systems and other software residing on such hardware) which is operated or under the control of EMSYSTEMS, LLC and used by EMSYSTEMS, LLC in connection with the operation of the Software, and all replacements and modifications thereof.

"Fee" means any amount due under this Agreement, including those fees set forth on Schedule 2.

"Force Majeure Event" means (i) fire, flood, earthquake, elements of nature or acts of God, (ii) acts of vandalism or terrorism (electronic or otherwise), (iii) riots, civil disorders or revolutions, (iv) strike or other significant labor disruption, (v) nonperformance by a third party, (vi) any failures or fluctuations in telecommunications systems, lines or other Equipment or (vii) any other cause beyond the reasonable control of EMSYSTEMS, LLC.

"Implementation Services" means services performed prior to the Commencement Date to adapt, at the written request of Client, the preferences in each Module; provided, however, that EMSYSTEMS, LLC shall not be obligated to perform any Implementation Services.

"Law" means all applicable state, federal and local laws, rules and regulations.

"Module" means a module of the Software as described on Schedule 2.

"Rights" means all right, title and interest in and to the Software, including all intellectual property rights, know-how and System design and functionality.

"Software" means (i) the EMSystems® software and all related documentation; (ii) any patents, copyrights, trade secrets, engineering and technical data, knowledge, experience, know-how, expertise and proprietary or other information possessed by EMSYSTEMS, LLC relating to the design, development, sale and use of the EMSystems® software or the documentation, including, but not limited to, specifications, test procedures, operation and maintenance manuals and all other proprietary information relating, directly or indirectly, to the EMSystems® software; (iii) documentation, (iv) any revision, modification, translation, abridgment, condensation, expansion, collection, compilation or other form in which the EMSystems® software and documentation may be recast, transformed, posted or adopted, regardless of whether it qualifies as a derivative work under U.S. copyright law and regardless of whether EMSYSTEMS, LLC created it; and (v) any and all modifications to the Software.

"System" means the modules of the Software set forth on Schedule 2, as amended from time to time, and the Equipment.

"Term" has the meaning set forth in section 8.

"T&Cs" means the terms and conditions of use of EMSystems® products as published on the EMSystems® website and as amended from time to time at EMSYSTEMS, LLC's sole discretion.

"Training Services" means any training in the Use of the System that EMSYSTEMS, LLC makes available to Client and Authorized User employees.

"Use" means to access the Equipment, view the Software and enter Client Data into the System.

"User Equipment" means the hardware, software and communications lines or capabilities that may be necessary for Client or any Authorized User to Use the System.

Schedule 2
Modules, Services and Fees

This Schedule 2 contains modules and services available to a Client.

Region: Monterey County, California

Number of individuals in the Region using the most current population figures on www.census.gov: 431,344

Term: From September18, 2015 to September 18, 2018

Software and Services						
Product Code	**Item Description**	**Qty**	**Unit Price**	**1/27/2016-9/20/2016**	**9/21/2016-9/20/2017**	**9/21/2017-9/20/2018**
SW-SaaS-EMR-ST	EMResource Communications & Resource Management System SaaS EMResource Annual Subscription	431344	$0.04	$17,253.76	$17,253.76	$17,253.76
			Sub-Totals	**$17,253.76**	**$17,253.76**	**$17,253.76**

EMSystems, LLC
 By:_____

   Vice President

Date: _____

County of Monterey

By:_____

   Department Head

Date: _____

By:_____
    Contracts/Purchasing Officer

Date: _____

By:_____
    County Counsel

Date: _____

By:_____
    Auditor/Controller

Date: _____

By:_____
    Risk Management

Date: _____

By:_____
    Information Systems

Date: _____