MEMORANDUM OF UNDERSTANDING BETWEEN THE
COUNTY OF EL DORADO AND THE COUNTY OF SAN JOAQUIN
#673-PHD1007

This Memorandum of Understanding (hereinafter "MOU") is made and entered into by and between the County of El Dorado, a separate legal subdivision of the State of California (hereinafter, "Participant") and the County of San Joaquin, a legal subdivision of the State of California (hereinafter, "County"). The County is the seat of OES Region IV medical and health disaster planning and coordination and the licensed contract entity by EMSystem between Participant and EMSystem, LLC (hereinafter, "EMSLLC").

WHEREAS:

A. Participant and County desire to use EMResource™, an application of EMSLLC to provide hospital resource management, multi-casualty incident management, and event based hospital bed tracking solutions that enhance emergency preparedness and response to medical emergencies, multi-casualty and mass casualty events and public health incidents.

B. Both Participant and County desire to enable the efficient payment of funds for services provided by EMSLLC.

NOW, THEREFORE, it is mutually agreed as follows:

1. **TERM OF MOU:**

   This MOU will become effective upon its execution by each party. Its initial term shall extend until October 1, 2008. Unless a party elects to terminate all or part of the services provided under the MOU and does so in accordance with the Notice of Termination provision as provided in Paragraph 5(n) herein, the term shall be extended automatically, on an annual basis, for subsequent periods of one year each.

2. **PARTICIPANT RESPONSIBILITIES:**

   Participant agrees to pay the portion of the annual EMSLLC contract fee assigned to them by County distribution. Payment shall be made to County within forty five (45) days of the date of invoice. County distribution is calculated using the EMSLLC fee of $0.03 per capita, set forth in Schedule 2 of Attachment I to this MOU, based on the population of Participant as reported by the most current population figures on www.census.gov; and a fee of $150.00 per hour for Additional Training Services and Consulting services, which may be provided at the request of Participant.

   County's share of cost for the use of EMResource shall not exceed $5,341.98 in FY 07/08, detailed under Attachment II, EMSystem User Agreement Fees for FY

07/08. Not to exceed amounts in each subsequent extension year shall be determined similarly before the start of that year and shall take effect upon receipt of written notification by Participant from County.

3. **COUNTY RESPONSIBILITIES**:

County agrees to serve as the EMSLLC contract entity for all Participant counties. As the contract entity County shall accept payment from each Participant for EMSLLC services and relay those payments to EMSLLC upon receipt of invoice. County shall pay EMSLLC's fees within thirty (30) days of the date of invoice from EMSLLC in accordance with the EMSystem Use Agreement, as provided in Attachment 1, which is made a part of this MOU as if fully set forth at length at this place.

4. **FISCAL PROVISIONS:**

Except as otherwise expressly provided herein, each party shall timely reimburse the other party for services rendered, or monies paid, on behalf of the other party.

5. **GENERAL PROVISIONS:**

a) AGENCY: When one party is acting as the agent for the other party in performing obligations under this MOU for that other party, the other party for whom the service was being performed shall be bound by the agent's authorized commitments on behalf of that other party. When one party is acting as the agent for the other party in performing obligations under this MOU for that other party, any liabilities arising from authorized actions by the agent shall be the sole responsibility of the party for whom the service was being performed. The party for whom the service was being performed shall indemnify, defend and hold the agent harmless from all such liabilities. Pursuant to the provisions of Government Code Section 895.4, each party shall be solely responsible for all authorized commitments made on behalf of that party and the parties shall not be jointly and severally liable for the conduct nor shall contribution be due from the party performing the service for the other as provided in Government Code section 895.6. As used in this provision the word "Liabilities" means liabilities, lawsuits, claims, judgments, demands, clean-up orders, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs, expenses, loss, penalties and other detriments of every nature and description whatsoever, including all costs and expenses of litigation or arbitration, attorneys fees (whether staff attorneys or outside attorneys) and court costs, whether under state or federal law, except for liabilities caused by the sole negligence or willful misconduct of the party seeking indemnity.

b) AMENDMENT OR MODIFICATION: This MOU may be modified or amended only by a written instrument executed by County and each Participant, pursuant to the same authorizations used to execute this MOU in its original form. No employee or officer of a party is authorized to waive or amend any provision of this MOU except upon approval by their County Board of Supervisors.

c) ADDITIONAL ACTIONS: The parties shall perform all acts and execute further documents necessary to effectuate the intent of this MOU.

d) PARTIAL INVALIDITY: If any one or more of the agreements, conditions, covenants or terms hereof shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining agreements, conditions, covenants or terms hereof shall be affected thereby, and each provision of this MOU shall be valid and enforceable to the fullest extent permitted by law.

e) OBLIGATIONS TO CONTINUE DURING TERM: Unless specifically designated otherwise, all of the parties' obligations under this MOU shall continue throughout the term of this MOU.

f) GOVERNING LAW: This MOU shall be construed pursuant to the applicable Federal laws and the laws of the State of California.

g) MUTUAL GOOD FAITH: Throughout the term of this MOU, the parties agree to exercise good faith and to observe the covenants contained herein.

h) NO THIRD PARTY BENEFICIARIES: This MOU is not intended to, and shall not be construed to, create any right on the part of a Third Party to bring an action to enforce any of its terms nor to impose any mandatory duty enforceable by a third party.

i) CAPTIONS: The captions of each paragraph, section, or subsection contained in the MOU are for ease of reference only and shall not affect the interpretation or meaning of this MOU.

j) PREPARATION OF AGREEMENT: This MOU was drafted and entered into after careful review and upon the advice of competent counsel; it shall not be construed more strongly for or against either party. This MOU may not be unilaterally amended and shall be strictly construed as set forth herein to accomplish the purposes of the MOU.

k) AUTHORIZATION: Each person executing this MOU warrants that the party is authorized to execute this MOU on behalf of the party represented.

l) SUCCESSORS AND ASSIGNS: This MOU shall bind and inure to the benefit of the assigns and successors in interest of each of the parties. However, this MOU is not intended to vest any third party to this MOU with any additional rights nor create any mandatory duties enforceable by a third party.

m) NOTICE: Notice to Participant or County by the other shall be in writing, and may be given either personally or by registered or certified mail, return receipt requested. A party shall be conclusively presumed to be notified when notice is sent to the persons and addresses stated below, in accordance with this provision. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (1) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (2) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to those addressed as follows:

EL DORADO COUNTY PUBLIC HEALTH DEPARTMENT
931 SPRING STREET
PLACERVILLE, CA 95667
ATTN: GAYLE ERBE-HAMLIN, DIRECTOR

or to such other location as the Participant directs.

Notices to Contractor shall be addressed as follows:

P.O. BOX 1020
STOCKTON, CA 95201
ATTN: DAN BURCH

or to such other location as the County directs.

n) NOTICE OF TERMINATION OF ALL OR PART OF MOU: Notwithstanding the provisions for annual renewal, this MOU between Participant and County may be terminated at any time, with or without cause, by Participant or County, thirty (30) days after written notice of termination is delivered, as provided in Paragraph 5(m) herein. Participant shall be obligated to pay for services, as described herein, up to the date of delivery of such notice.

IN WITNESS WHEREOF, the parties hereto have executed this MOU on latest date herein written below.

COUNTY OF SAN JOAQUIN   COUNTY OF El DORADO

By: _____   By: _____
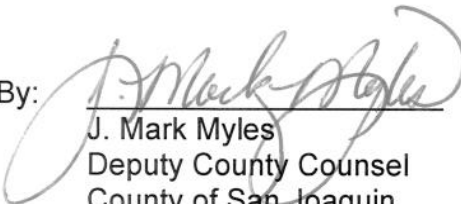Dan Burch   Gayle Erbe-Hamlin
EMS Administrator   Public Health Director
                                         Contract Administrator

APPROVED AS TO FORM: COUNTY OF El DORADO

By: _____   By: _____
J. Mark Myles   Helen K. Baumann, Chairman
Deputy County Counsel   Board of Supervisors
County of San Joaquin

                                         ATTEST:
                                         Cindy Keck, Clerk

                                         By: _____ Date: _____
                                         Deputy Clerk

IN WITNESS WHEREOF, the parties hereto have executed this MOU on latest date herein written below.

COUNTY OF SAN JOAQUIN

By: _____
Dan Burch
EMS Administrator

APPROVED AS TO FORM:

By: _____
J. Mark Myles
Deputy County Counsel
County of San Joaquin

COUNTY OF El DORADO

By: _____
Gayle Erbe-Hamlin
Public Health Director
Contract Administrator

COUNTY OF El DORADO

By: _____
Helen K. Baumann, Chairman
Board of Supervisors

ATTEST:
Cindy Keck, Clerk

By: _____ Date: _____
Deputy Clerk

IN WITNESS WHEREOF, the parties hereto have executed this MOU on latest date herein written below.
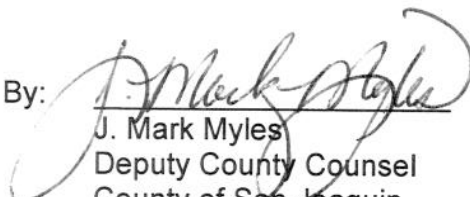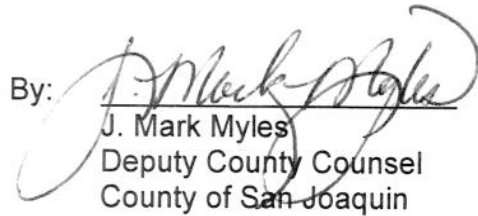
COUNTY OF SAN JOAQUIN

COUNTY OF El DORADO

By: _Dan B_____
Dan Burch
EMS Administrator

By: _____
Gayle Erbe-Hamlin
Public Health Director
Contract Administrator

APPROVED AS TO FORM:

COUNTY OF El DORADO

By: _Mark Myles_____
J. Mark Myles
Deputy County Counsel
County of San Joaquin

By: _____
Helen K. Baumann, Chairman
Board of Supervisors

ATTEST:
Cindy Keck, Clerk

By: _____ Date: _____
Deputy Clerk

Before the Board of Supervisors
County of San Joaquin, State of California

B- 07-994
_____

MOTION: ORNELLAS/GUTIERREZ/5

Approval of EMSystem Use Agreement and Authorize Cost Sharing Memorandums of Understanding With Participating Counties And Agencies

It is recommended that the Board of Supervisors:

1) Approve a sole source proposal submitted by EMSYSTEM LLC for use of Internet based hospital communications, software, connecting 39 area hospitals in 14 counties together for multi-casualty incident management and patient distribution, in the amount of $117,618;

2) Authorize the Chairman to execute the EMSystem Use Agreement;

3) Authorize the EMS Administrator to execute memoranda of understanding (mou's) with participating counties and agencies;

I HEREBY CERTIFY that the above order was passed and adopted on _____10/2/07_____ by the following vote of the Board of Supervisors, to wit:

AYES: VOGEL, RUHSTALLTER, ORNELLAS, GUTIERREZ, MOW

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE

Clerk of the Board of Supervisors
County of San Joaquin
State of California

By:_____
LOIS M. SAHYOUN
Clerk

THIS AGREEMENT is entered into and effective as of October 1, 2007 (the "Effective Date"), between SAN JOAQUIN COUNTY EMS located at P.O. Box 1020 Stockton, CA 95201 ("Client"), and EMSYSTEM, LLC, a Wisconsin limited liability company located at 135 South 84th Street, Suite 150, Milwaukee, Wisconsin 53214 ("EMSLLC" and, together with Client, each a "Party" and collectively the "Parties").

RECITALS

A.   EMSLLC 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.   EMSLLC desires to provide to Client and its Authorized Users, and Client desires, on behalf of its Authorized Users, to obtain from EMSLLC, remote access to EMSLLC 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, EMSLLC 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. EMSLLC will provide Client with use of the System and any Implementation Services and Training Services as set forth on Schedule 2. EMSLLC 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 and all applicable fees.

3. Fees: Payments.

(a) Fees. As consideration for Use of the System and the services provided by EMSLLC under this Agreement, Client shall pay to EMSLLC the Fees. EMSLLC shall provide an invoice to Client for all Fees incurred by Client as set forth on Schedule 2. Client shall pay each invoice within 30 days of the date of such invoice.

(b) Adjustment. EMSLLC may adjust the amount of any and all Fees upon prior written notice to Client, within 90 days of the anniversary of the Effective Date.

(c) Expenses. Client will pay or reimburse EMSLLC for out-of-pocket travel and lodging expenses incurred by EMSLLC and approved in advance by Client.

(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 EMSLLC) levied or assessed in connection with this Agreement.

(e) Overdue Payments. If Client fails to pay to EMSLLC any Fees as and when such Fees are due: (i) Client will pay interest on any such Fees at a rate equal to the lesser of 1.5% per month or the maximum rate permitted by applicable Law from the date such Fees are due; (ii) EMSLLC may suspend all Use of the System and the performance of any other services which EMSLLC is then performing for Client; and (iii) EMSLLC may terminate this Agreement as set forth in section 7. Client shall also reimburse EMSLLC for all costs and expenses incurred by EMSLLC, including, without limitation, reasonable attorney's fees, in collecting any past due amount.

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 EMSLLC;

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

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

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

(b) Accurate Data. EMSLLC 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. EMSLLC 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 EMSLLC and Client, all Client Data is and shall remain the property of Client. EMSLLC 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 EMSLLC, in its sole discretion, 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 EMSLLC has suspended or terminated Use of the System as permitted under this Agreement.

(c) Safeguarding Client Data in the System. During the Term, EMSLLC 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 EMSLLC while resident in the System, EMSLLC 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 EMSLLC Confidential Information without the prior written consent of EMSLLC 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. Client hereby grants to EMSLLC permission to reproduce and make reference to Client's and any Authorized User's name and trademark on EMSLLC's website and in any promotional materials or proposals. EMSLLC may also disclose generic descriptions of the kinds of services provided to Client.

(ii) Obligations. Client shall use, and shall take reasonable efforts to ensure that each Authorized User uses, its best efforts to prevent disclosing the EMSLLC Confidential Information to third parties; provided, however, that Client may disclose such information: (1) 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 and (2) subject to court order, subpoena, and the California Public records Act. Client shall be responsible for any breach by any Authorized User, employee or agent of any such confidentiality obligations. Notwithstanding the foregoing, Client and Authorized Users shall not be liable for the breach of any such confidentiality obligations by any Authorized User except its employees or consultants. Following the termination of this Agreement, Client shall, and shall ensure that each Authorized User shall, promptly return to EMSLLC all tangible embodiments of EMSLLC Confidential Information.

(f) Restricted Activities. During the Term and for a period of three years following termination of this Agreement, Client shall not, directly or indirectly, engage in, invest in, finance, participate in or advise, directly or indirectly, any business, enterprise, entity or individual that provides products or services competitive with the Software.

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 EMSLLC'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 EMSLLC's Rights in the System;

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

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

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

(c) Software Updates. EMSLLC may enhance or modify the System in its sole discretion. EMSLLC 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 EMSLLC 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. Term and Termination.

(a) Term. Unless terminated as set forth in this section 7, 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") and (iii) Automatically renews on each anniversary of the commencement date for additional one-year terms (each a "Renewal Term" and, with the Initial Term, referred to as the "Term").

(b) Termination by Client. Client may terminate this Agreement upon written notice to EMSLLC provided at least 60 days notice.

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

(i) If Client fails to pay any amount due to EMSLLC under this Agreement, within five days after written notice of the nonpayment is given by EMSLLC 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 EMSLLC of such default.

(d) 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.

(e) Effect of Termination. Upon expiration or termination of this Agreement for any reason: (i) Client will pay EMSLLC all Fees accruing through the date of termination; (ii) EMSLLC 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.

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

8. Warranty, Limitations.

(a) Warranty.

(i) EMSLLC 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 EMSLLC under this Agreement.

(ii) EMSLLC warrants that it has the right to reproduce, market, sell, license, sublicense and otherwise distribute the Software and use and license the intellectual property therein as required under this Agreement.

(iii) EMSLLC warrants that, to the best of EMSLLC's knowledge, the license and use of the Software and intellectual property therein in the manner contemplated under this Agreement does not infringe or violate any legal right of any other person or party.

(b) "As is, where is". Except as provided in section 8(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 8(a)(i), 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 warranties provided in section 8(a), EMSLLC 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. Notwithstanding the

foregoing in this Section 8(e), EMSLLC indemnifies Client and Authorized Users against any claims from third parties that the Client and Authorized Users' use of the Software is a violation of such third parties' patent, trademark, copyright, or other proprietary rights, but such indemnification only applies if such use is consistent with the terms and contemplated manner of use of this Agreement.

For all causes of action or claims for which repair of the System is not possible, EMSLLC'S aggregate liability for damages shall not exceed 90 times the average daily charge. EMSLLC shall not be liable to Client, any Authorized User or any third party for any other damages, regardless of whether EMSLLC knew or should have known of the possibility thereof.

(f) Acknowledgment. Client and EMSLLC expressly acknowledge that the limitations and remedy contained in this section 8 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 EMSLLC fully understands and irrevocably accepts such limitations and remedy.

(g) Force Majeure. EMSLLC 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, EMSLLC shall be excused from further performance or observance of the obligations so affected for as long as the Force Majeure Event remains in place. Upon the occurrence of any Force Majeure Event, the obligation of Client to pay Fees for services not performed due to such Force Majeure Event shall be excused; provided, however, that nothing in this section 8(g) shall relieve Client of the obligation to pay Fees for any services performed prior to, during or after such Force Majeure Event.

9. 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) <u>Relationship of the Parties</u>. 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) <u>Severability</u>. 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) <u>Assignment</u>. 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 EMSLLC may assign this Agreement to any third party that acquires all or substantially all of the assets or business operations of EMSLLC by purchase, merger or otherwise.

(e) <u>Survival</u>. 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) <u>Entire Agreement</u>. 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) <u>Compliance with Applicable Laws</u>. In carrying out its obligations and responsibilities under this Agreement, each Party agrees to observe and comply with all Laws.

(h) <u>Governing Law; Venue</u>. 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.

(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.

Client: _Victor Now_

By: _____

EMSystem, LLC

Andy Nunemaker, CEO

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, under this agreement.

"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 EMSLLC 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 EMSLLC.

"EMSLLC Confidential Information" means (i) all information of EMSLLC 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 EMSLLC; (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 EMSLLC 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 EMSLLC and used by EMSLLC 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 EMSLLC.

"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 EMSLLC 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 EMSystem® 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 EMSLLC relating to the design, development, sale and use of the EMSystem® 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 EMSystem® software; (iii) documentation, (iv) any revision, modification, translation, abridgment, condensation, expansion, collection, compilation or other form in which the EMSystem® 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 EMSLLC 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 7.

"T&Cs" means the terms and conditions of use of EMSystem® as published on the EMSystem® website and as amended from time to time at EMSLLC's sole discretion. If there is any conflict between the terms of this Agreement, any schedules, or the T&C's, the terms of this Agreement will have priority.

"Training Services" means any training in the Use of the System that EMSLLC 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 all modules and services available to a Client. An "X" in the left column indicates a service that will be provided under the terms of this agreement for the term specified below:

Region: California Counties of Amador, Calaveras, El Dorado, Mariposa, Merced, Nevada, Placer, Sacramento, San Joaquin, Stanislaus, Sutter, Tuolumne, Yolo, and Yuba.

Number of individuals in the Region using the most current population figures on www.census.gov: 3,920,572

Term: From 10/1/2007 To 9/30/2008

"X" indicates services provided to Client.	EMResource Module or Service Name	Description	When furnished to Authorized Users (Subject to the Agreement terms)	Fees per Unit	Total Fees:	Invoice Frequency
☒	**Hospital Emergency Department Status Tracking ("ED Status Tracking") and/or Daily Bed Tracking**	Tracks a single status of an emergency department or hospital (such as "open" or "closed").Track up to 10 hospital-wide bed categories on a 24x7 basis.	24 x 7	$0.03/capita – 10/1/2007-9/30/2008 $0.035/capita 10/1/2008-9/30/2009 $.04/capita10/1/2009-9/30/2010, and annually thereafter.	$117,617.16 -10/1/2007-9/30/2008	Prior to the Commencement Date. Annually, thereafter, payment to increase per Fees per Unit column
☒	**Standard Mass/multi casualty incident event management.**	Tracks the status of 3 standard triage categories (Red, Yellow, and Green) during a mass casualty incident	During a Standard Mass Casualty Incident	Included in the Fees for the ED Status Tracking or Daily Bed Tracking Modules		
☒	**Advanced Mass/multi casualty incident event management.**	Tracks the status of 7 additional standard triage categories (Black and 6 others) during a mass casualty incident.	During an Advanced Mass Casualty Incident	Included in the Fees for the ED Status Tracking or Daily Bed Tracking Modules		
☒	**Event-based bed tracking**	Tracks the availability of up to 10 categories of hospital beds.	Immediately following a Mass Casualty Event or National Disaster, or during a public health emergency, such as an influenza outbreak.	Included in the Fees for the ED Status Tracking or Daily Bed Tracking Modules		

EMSYSTEM® USE AGREEMENT

"X" indicates services provided to Client.	EMResource Module or Service Name	Description	When furnished to Authorized Users (Subject to the Agreement terms)	Fees per Unit	Total Fees:	Invoice Frequency
☒	National Disaster Medical System (NDMS) Bed Reporting	Tracks all then-current NDMS hospital bed categories. (Does not include submission of the data to NDMS or others.)	During a National Disaster	Included in the Fees for the ED Status Tracking or Daily Bed Tracking Modules		
	Total Fees *10/1/2007-* *9/30/2008:*				$117,617.16	

ACCEPTED AND AGREED THIS _____ DAY OF _____, 200__

CLIENT: _Victor Mous_

BY _____ Title _CHAIRMAN_

EMSYSTEM, LLC

BY _____ Title _CEO_

mw1378426_2

EMSystem User Agreemnt Fees for FY07/08

Rank	County	Population	Cost per capita	FY07/08	MOU Entity
8	Sacramento County	1,374,724	$0.03	$41,241.72	Hospital Council
15	San Joaquin County	673,170	$0.03	$20,195.10	N/A
16	Stanislaus County	512,138	$0.03	$15,364.14	Mountain Valley EMS
22	Placer County	326,242	$0.03	$9,787.26	Sierra Sac EMS
26	Merced County	245,658	$0.03	$7,369.74	Merced County
28	Yolo County	188,085	$0.03	$5,642.55	Sierra Sac EMS
30	El Dorado County	178,066	$0.03	$5,341.98	El Dorado County
36	Nevada County	98,764	$0.03	$2,962.92	Sierra Sac EMS
37	Sutter County	91,410	$0.03	$2,742.30	Sierra Sac EMS
39	Yuba County	70,396	$0.03	$2,111.88	Sierra Sac EMS
42	Tuolumne County	56,855	$0.03	$1,705.65	Tuolumne County
44	Calaveras County	47,722	$0.03	$1,431.66	Mountain Valley EMS
46	Amador County	38,941	$0.03	$1,168.23	Mountain Valley EMS
52	Mariposa County	18,401	$0.03	$552.03	Mountain Valley EMS
	Totals	**3,920,572**	$0.03	**$117,617.16**	