emsCharts SERVICE AGREEMENT

THIS AGREEMENT (the "Agreement") effective _____, is made and entered into by and between **Williamson County EMS, acting by and through Williamson County, Texas, a political subdivision of the State of Texas** ("Customer") and the emsCharts, Inc. ("Vendor"), a Pennsylvania corporation.

WHEREAS, Vendor has established and operates a proprietary web-based computer patient charting system ("emsCharts"), that allows customers to create, maintain, access, manage and report information related to emergency medical care transport and other medical services; mobile data collection software for Pocket PC PDAs (emsCharts Pocket), and mobile data collection software for laptop and tablet computers (emsCharts Mobile) that allows onsite patient data collection.

WHEREAS, Customer desires to utilize these software products to assist in creating, maintaining, accessing, managing and reporting pre-hospital medical and operational information;

NOW, THEREFORE, Customer and Vendor agree as follows:

1. SERVICES PROVIDED BY VENDOR

1.1 Website. Customer and its authorized users (as defined and limited in Section 3.2 of this Agreement) shall be given access to the emsCharts website at all times except when unavailable due to upgrades or repairs/maintenance. The website shall provide Customer and its authorized users access to a proprietary computerized system for data input, manipulation and standard report generation per Vendor specifications.

1.2 Modifications/Customizations. Customer accepts emsCharts, emsCharts Pocket, and emsCharts Mobile with the standard functionality, reports, and queries existing at the time of purchase. If Customer requests custom functions, reports or queries, Vendor will advise Customer if such enhancements are currently being developed or will be placed on a future development list. If at that time Vendor does not plan to develop the enhancements as part of product standard features, Customer and Vendor may agree that Vendor will provide the enhancements for a development fee. No work on a Customer-requested enhancement will be undertaken unless Customer agrees in writing in advance to the scope and estimated cost of the enhancement. All enhancements, including all enhancements requested and paid for by Customer, shall become the property of Vendor and may be incorporated into versions made available to other customers.

1.3 Documentation and Training. Vendor shall supply Customer with user manuals containing specifications and instructions. Vendor shall also provide Customer and its authorized users phone and web-based administrative support and configuration training during the first month following Customer's first use of Vendor's products.

1.3.1 On-site training can be provided on a time and expense basis per mutual agreement of Customer and Vendor.

1.4 <u>Customer Support.</u> General phone support is available during Vendor regular business hours. Emergency phone support is available 24 hours per day, 7 days per week, through a designated communication center.

1.5 <u>Project Manager.</u> Vendor shall appoint a project manager who shall consult regularly with Customer's designated representative to facilitate the performance of this Agreement.

1.6 <u>System Performance and Maintenance.</u> System performance and maintenance shall be subject to the "Service Levels and Maintenance Guidelines" set forth in Attachment A.

1.7 <u>State Reporting.</u> If requested in writing by Customer, Vendor shall provide a means of collecting and transmitting Customer's pre-hospital data to any state regulatory body or designee in compliance with reasonable state regulations and requirements.

2. CUSTOMER OBLIGATIONS

2.1 <u>Hardware and Software.</u> For each workstation from which Customer desires access to emsCharts, Customer shall provide and install at its own expense hardware and software meeting the specifications set forth in the User Manual.

2.2 <u>Internet Access.</u> Customer shall be responsible for obtaining and paying for physical connections of the computers to the Internet.

2.3 <u>Upgrades.</u> Customer shall be responsible to purchase and/or install any upgrades to hardware or software necessary to access future versions of emsCharts, emsCharts Pocket, and emsCharts Mobile. Vendor agrees to provide Customer with at least six (6) months notice of any changes that may require modifications to Customer's hardware or software.

2.4 <u>Customer Representative.</u> Customer shall designate a representative of Customer ("Customer Representative") to communicate with Vendor's project manager to facilitate the performance of this Agreement.

3. LICENSE AND RESTRICTIONS ON USE

3.1 <u>Grant of License.</u> Upon receipt of applicable Service Fees and subject to the terms of this Agreement, Vendor grants to Customer a non-exclusive, non-transferable, limited license to access and use emsCharts only in the following manner: (a) by Customer and its authorized users remotely accessing the emsCharts website; (b) for bona fide purposes relating to the input, manipulation and reporting of patient, other clinical and operational data created and modified by Customer and its authorized users, and for no other purposes; (c) during the Term.

3.2 <u>Authorized Users.</u>

3.2.1 Vendor shall give administrative rights to the Customer Representative or other Customer designee to establish user passwords for persons and entities Customer authorizes to input and/or access its data ("authorized users"). Customer shall have

exclusive control over the designation of authorized users. Customer and its authorized users are responsible for maintaining the confidentiality of all passwords.

3.2.2   Customer is responsible to assure that its authorized users comply with the limitations of use set forth in Sections 3.2, 4.1, 4.2 and 4.3 of this Agreement and to enter into any confidentiality agreement(s) with its authorized users that may be required by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") or other federal or state law.

3.2.3   In no event shall Customer or any authorized user knowingly allow access to emsCharts by any unauthorized user or by any person or entity who/that makes, markets, distributes or has any ownership or other economic interest in any service or product that would compete with the service(s) and product(s) provided under the terms of this Agreement.

4.   DATA

4.1   Ownership of Data.   All data entered by Customer shall be considered the property of Customer and shall be kept confidential by Vendor.

4.2   Access to Data.   Only Customer and its authorized users may access Customer data. Vendor shall not be responsible for the unauthorized, illegal, or improper dissemination or use of data by Customer or its authorized users.

4.3   Protected Health Information.   It is recognized by the parties that data entered by Customer and its authorized users will include "Protected Health Information" as that term is defined in HIPAA regulations at 45 CFR § 164.501. Vendor agrees to comply with applicable provisions of HIPAA as more fully set forth in the attached Business Associate Agreement.

4.3.1   Vendor represents that its software, database, servers and communication protocols and procedures, when properly utilized in accordance with this Agreement and emsCharts' User Manual, meet the security standards established by HIPAA for the protection of Protected Health Information.

4.4   Transfer and Removal of Data.   Upon termination of this Agreement by either party for any reason, or at any time requested by Customer in writing during the Term of this Agreement, Vendor shall transfer all data to Customer within thirty (30) days in a mutually agreed format. If Customer and Vendor cannot agree upon a format within thirty (30) days, Vendor shall have the right to transfer or store Customer's data in a generally accepted format. After termination and transfer of data to Customer, or at any other time requested by Customer, Vendor shall remove any and all Customer data from its servers unless such removal would violate a court order, law, regulation or other legal prohibition.

5.   FEES

5.1   Monthly Access Fees.   Customer agrees to pay the fees set forth in the attached emsCharts Price Quote (herein referred to as Attachment C), based upon the volume of Customer's patient charts. Customer agrees to make full payment in accordance with Chapter

2251 of the Texas Government Code. Invoices shall be paid by Customer within thirty (30) days from the date of the Williamson County Auditor's receipt of an invoice. Interest charges for any late payments shall be paid by Customer in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of Customer's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. In the event that a discrepancy arises in relation to an invoice, such as an incorrect amount on an invoice or a lack of documentation that is required to be attached to an invoice to evidence the amount claimed to be due, Customer shall notify Vendor of the discrepancy. Following Customer's notification of any discrepancy as to an invoice, Vendor must resolve the discrepancy and resubmit a corrected or revised invoice, which includes all required support documentation, to the Williamson County Auditor. Customer shall pay the invoice within thirty (30) days from the date of the Williamson County Auditor's receipt of the corrected or revised invoice. Customer's payment of an invoice that contains a discrepancy shall not be considered late, nor shall any interest begin to accrue until the thirty-first (31st) day following the Williamson County Auditor's receipt of the corrected or revised invoice.

     5.2   Other Charges/Costs. Customer is responsible for and shall pay all Internet connectivity and service charges and all other costs associated with obtaining and maintaining the required hardware and software as specified in the User Manual.

6. VENDOR'S PROTECTED PROPERTY

     6.1   No Transfer of Rights. All title and applicable common law and statutory rights in and to emsCharts, emsCharts Pocket, and emsCharts Mobile including, but not limited to, rights in confidential and trade secret material, Screen Shots, Screen Layouts, business logic, source code, object code, user manuals, specifications, trademarks, service marks, logos, patents and copyrights, if any, and all derivative works therein shall, as between Customer and Vendor, be and remain the property of Vendor, and Customer will have no right, title or interest in any such property ("Vendor's Protected Property").

     6.2   Forbidden Acts. Customer agrees not to copy, distribute, sell, reproduce, alter, enhance, modify, and reverse engineer or use for any purpose other than the legitimate purposes authorized by this Agreement, any Vendor Protected Property. Customer also agrees not to develop comparable or competitive products.

     6.3   Acts Allowed by Licensee. Notwithstanding the above, in the exercise of the rights and license granted hereunder, Customer may print or download management reports and forms from emsCharts, provided that Customer keeps intact all copyright and other proprietary notices.

     6.4   Acknowledgement of Rights. Customer acknowledges that Vendor's property rights in and to emsCharts, emsCharts Pocket, and emsCharts Mobile are valuable and unique and that such property rights are protected. Customer also acknowledges that it will preserve and protect the confidentiality of these products. In protecting the confidentiality of emsCharts, emsCharts Pocket, and emsCharts Mobile, customer shall, at a minimum, exercise the same

degree of care and take the same actions that Customer exercises and takes with regard to the preservation and protection of its own confidential information and proprietary rights, but not less than a reasonable degree of care. Furthermore, Customer acknowledges that Vendor will suffer irreparable harm if any of the terms of this Agreement relating to protection of Vendor's interest in emsCharts, emsCharts Pocket, and emsCharts Mobile are breached, and that monetary damages will be inadequate to compensate Vendor for such a breach.

7. TERM AND TERMINATION

7.1   Term. This Agreement shall be considered effective as of the date first written above (the "Effective Date") and shall continue in effect until terminated pursuant to the terms of this Agreement.

7.2   Termination Without Cause. At any time after the Effective Date, Customer shall have the right to terminate this Agreement for any reason or no reason upon thirty (30) days written notice to Vendor and Vendor shall have the right to terminate for any reason or no reason upon one hundred eighty (180) days written notice to Customer.

7.3   Termination For Cause. Either party may terminate this Agreement upon thirty (30) days written notice if the other party is in default of any material term of this Agreement. A party shall be in default of any material term if it has failed to comply with such term for at least thirty (30) days after receipt of a written description of the failure by the other party.

7.4   Termination of Product. At any time after the Effective Date, Vendor shall have the right to terminate its involvement with or discontinue marketing and/or maintaining emsCharts, emsCharts Pocket, and emsCharts Mobile software. Under such circumstances, Vendor will use its best efforts to give Customer not less than one hundred eighty (180) days prior written notice of termination of this Agreement and to either find alternate means of providing the same or similar services to Customer or to provide any source code necessary for Customer to create software or transfer or download data to another software product that can produce similar functionality for Customer. The provisions of such source code for the limited purposes set forth in this paragraph shall not transfer to Customer any ownership interest in the source code and shall not affect Vendor's ownership rights in the source code and emsCharts, emsCharts Pocket, and emsCharts Mobile.

7.5   Termination of License. Upon termination of this Agreement for any reason, Customer's license to access and use emsCharts, emsCharts Pocket, emsCharts Mobile and the right or authority of any other users designated or authorized by Customer to access and use emsCharts shall cease immediately. Thereafter, neither Customer nor any user designated or authorized by Customer shall access or use emsCharts for any reason or purpose without the express written authorization of Vendor.

7.6   Survival after Termination. The obligations, limitations and restrictions set forth in Sections 4.1, 4.2, 4.3, 4.4, 5, 6.1, 6.2, 6.4, 7.4, 7.5, 9.1, 9.2, 9.3, 9.4, 10.1, 10.2, 10.3 and 10.4 of this Agreement shall survive any termination of this Agreement.

8. WARRANTIES

8.1 <u>Limited Warranty</u>. Vendor represents and warrants that:

(a) it is a corporation in good standing under the laws of Pennsylvania with full authority to execute and perform this Agreement; and

(b) emsCharts, emsCharts Pocket, and emsCharts Mobile will perform in accordance with the specifications provided as part of the User Manual and in accordance with the Maintenance and Service Level Guidelines set forth in Attachment A.

8.1.1 This limited warranty shall not apply if Customer has not complied with all the requirements of this Agreement, including the hardware and software requirements set forth in the User Manual.

8.2 <u>No Other Warranties</u>. **THE LIMITED WARRANTIES CONTAINED IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED (WHETHER ARISING BY COURSE OF DEALING, PERFORMANCE, CUSTOM, USAGE IN THE TRADE OR PROFESSION, OR OTHERWISE), INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.**

8.3 <u>No Oral or Conflicting Warranties</u>. No Vendor employee or representative is authorized to make any promise or warranty to Customer that differs from or adds to the warranties set forth in this Agreement, and no such promise or warranty shall be effective unless set forth in writing and signed by an officer of Vendor.

9. DAMAGES, LIABILITY, LEGAL REMEDIES

9.1 <u>Limitation of Liability</u>. Notwithstanding anything in this Agreement to the contrary, in no event shall Vendor (or any member, officer, employee, agent or other representative) have obligations or liability to Customer or any other person for loss of profits, loss of use, loss of good will, or incidental, special or consequential damages or costs associated therewith, whether based in contract, tort, strict liability, or any other theory or form of action arising out of or in connection with any service, product, act, inaction, duty, warranty, promise, obligation or representation of Vendor (or any member, officer, employee, agent or other representative), even if Vendor has been advised of, knew or should have known of the possibility thereof.

9.2. <u>Dispute Resolution.</u> The parties to this Agreement will work together in good faith to resolve any controversy, dispute or claim between them which arises out of or relates to this Agreement, whether stated in tort, contract, statute, claim for benefits, bad faith, professional liability or otherwise ("Claim"). If the parties are unable to resolve the Claim within thirty (30) days following the date in which one party sent written notice of the Claim to the other party, and if a party wishes to pursue the Claim, such Claim shall be addressed through non-binding mediation under the Commercial Mediation Rules of the American Arbitration Association ("AAA"). A single mediator engaged in the practice of law, who is knowledgeable about subject

matter of this Agreement, will conduct the mediation under the then current rules of the AAA. Any mediation under this Agreement shall be conducted in Williamson County, Texas. All costs involved in the mediation shall be borne equally between the parties, except that each party shall bear its own attorneys fees. Nothing herein is intended to prevent either party from seeking any other remedy available at law including seeking redress in a court of competent jurisdiction. This provision shall survive the termination of this Agreement.

The parties hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any other arbitration statute.

10.   ACCESS TO BOOKS AND RECORDS

10.1   Vendor Documents. Vendor agrees that it will retain and make available upon request of the Secretary of the Department of Health and Human Services, or the Comptroller General of the United States, or any of their authorized representatives, any agreements between health care providers and Vendor and all books, documents and records necessary to verify the nature and extent of the costs and the services provided under this Agreement. Vendor agrees to retain all such books, documents and records, and to hold them available for such inspection until the expiration of four years after the completion of this Agreement. Vendor agrees to promptly notify Customer of any request it receives for access to Vendor records and to furnish a copy of such request. The regulations require that access be given within twenty (20) days from the date of the request, unless written objection is made. If Customer deems such request to be inappropriate, then it may file an objection. Any proceeding regarding Customer objections will be pursued at Customer's sole cost and expense, provided, however, that Vendor will provide reasonable cooperation with Customer. Furthermore, Vendor agrees that Customer or its duly authorized representatives shall, until the expiration of four (4) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of Vendor which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Vendor agrees that Customer shall have access during normal working hours to all necessary Vendor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. Vendor also agrees to provide copies of any of the above described information to Customer upon Customer's request. Customer shall give Vendor reasonable advance notice of intended audits.

10.2   Customer Documents. Customer agrees that it will retain and make available upon request of the Secretary of the Department of Health and Human Services, or the Comptroller General of the United States, or any of their authorized representatives, any agreements between health care providers and Customer, and all books, documents and records necessary to verify the nature and extent of the costs and the services provided under this Agreement. Customer agrees to retain such books, documents and records, and to hold them available for such inspection until the expiration of four years after the completion of this Agreement. Customer agrees to promptly notify Vendor of any request it receives for access to Customer records and to furnish a copy of such request. The regulations require that access be given within twenty (20) days from the date of the request, unless written objection is made. If

Vendor deems such a request to be inappropriate, then it may file an objection. Any proceeding regarding Vendor objections will be pursued at Vendor's sole cost and expense, provided, however, that Customer will provide reasonable cooperation with Vendor.

10.3 <u>Subcontractors</u>. Vendor and Customer agree that their subcontractors will similarly be required by them to retain and give access to similar books, documents and records.

10.4 <u>Compliance with Requests</u>. Compliance with any governmental request for information shall not provide a basis for a claim for any compensation under this Agreement.

11. <u>MISCELLANEOUS</u>

11.1 <u>Assignment</u>. The rights and obligations of either party under this Agreement shall not be assignable, whether by contract, merger, operation of law or otherwise, without the prior written consent of the other. Notwithstanding the foregoing, the rights and obligations of either party may be assigned to a successor corporation or entity of either party or a corporation or entity that purchases or obtains all or substantially all of the assets of either party. Vendor may also assign its rights and obligations to a corporation or other entity wholly or partly owned by Vendor. This Agreement shall be binding upon and inure to the benefit of parties hereto and the above referenced permitted successors and assigns.

11.2 <u>Force Majeure</u>. Except for the payment of fees by Customer, if the performance of any party to this Agreement is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, riot, fire, judicial or governmental action, labor disputes, interruption of telephone lines or electronic delivery systems, software or computer hardware defect or viruses (not caused by Vendor or someone under the control of Vendor), acts or omissions of third parties outside the control of Vendor (including but not limited to acts or omissions of any third party service provider or equipment vendor, messenger service or telephone carrier), acts of God, or any other causes or conditions reasonably beyond the control of either party, that party shall be excused from such performance to the extent and for the time period that such performance is prevented, hindered or delayed by such causes.

11.3 <u>Entire Agreement</u>. This Agreement constitutes the full understanding and entire agreement between the parties. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement shall be binding unless made in writing and signed by both parties.

11.4 <u>Notices</u>. All notices which either party may be required to give the other party shall be in writing and delivered personally, or sent registered or certified mail, postage prepaid, return receipt requested, or sent by facsimile or telecopier machine (provided no errors are reported in transmission) to the following:

Customer: Williamson County EMS
Contact: Edward Gomez
Title: Project manager
Address: P.O. Box 873
Georgetown, TX 78627
Phone: (512) 943-1264
Fax: (512) 943-1269

emsCharts, Inc.:
Peter Goutmann
Vice President
600 Mifflin Road, Suite 102
Pittsburgh, PA 15207
Fax: (412) 461-3270

11.5   No Third Party Beneficiaries. Nothing in this Agreement shall be construed as creating or granting rights or benefits hereunder to anyone other than Customer and Vendor.

11.6   Notification of Adverse Events. Each party shall be obligated to immediately notify the other if it is the subject of any investigatory action by any federal, state or local agency or affiliation/accreditation organization, or if it is sanctioned or disciplined by any such agency or organization.

11.7   Independent Provisions. Each provision of this Agreement shall be considered separable, and if for any reason any provision of this Agreement is determined to be invalid and/or contrary to any existing or future law, regulation, rule and/or order, such invalidity shall not impair the operations of, or affect those portions of this Agreement which are valid.

11.8   Independent Contractors. Neither party intends, and nothing contained herein shall be construed, to create a joint venture, partnership or principal and agent relationship between the parties, and accordingly, neither party shall have any right, power or authority to create any obligation, express or implied, on behalf of the other.

11.9   Compliance with Laws. Each party to this Agreement shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, salary and wage statutes and regulations, licensing laws and regulations. When required, Vendor shall furnish the Customer with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

11.10   No Waiver of Immunities. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to Customer, its past or present officers, employees, or agents, nor to create any legal rights or claim on behalf of any third party. Customer does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

11.11   Appropriation of Funds by Customer. Customer believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement. Vendor understands and agrees that the Customer's payment of amounts under this Agreement is contingent on the Customer receiving appropriations or other expenditure authority sufficient to allow the Customer, in the exercise of reasonable administrative discretion, to continue to make payments under this Agreement.

11.12 Authority to Enter Into Agreement. The parties to this Agreement each represent and warrant to the other party that the warranting party possesses the legal authority to enter into this Agreement and that it has taken all actions necessary to exercise that authority and to lawfully authorize its undersigned signatory to execute this Agreement and to bind such party to its terms. Each person executing this Agreement on behalf of a party warrants that he or she is duly authorized to enter into this Agreement on behalf of such party and to bind it to the terms hereof.

11.13 Execution in Counterparts. This Agreement may be executed in counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which together shall constitute one and the same document.

11.14 Entire Agreement. This Agreement represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by each party to this Agreement. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE CUSTOMER HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS AGREEMENT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE WILLIAMSON COUNTY COMMISSIONERS COURT.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Williamson County, Texas, a political
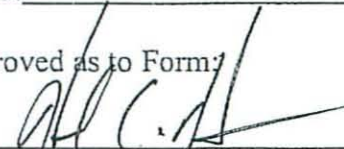Subdivision of the State of Texas
(Name of Customer)

By:_____

Dan A. Gattis   (Name)
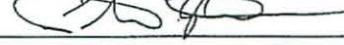
Williamson County Judge   (Title)

Dated:_____

Approved as to Form:

By: _____
      Hal C. Hawes,
      Assistant Williamson
      County Attorney

By: _____
      James Gilger, CPA,
      Williamson County Contract
      Management Auditor

emsCharts, Inc.

By:_____

Peter Goutmann   (Name)

Vice President   (Title)

Dated:_____7/25/08_____

ATTACHMENT A

MAINTENANCE AND SERVICE LEVEL GUIDELINES

I. DEFINITIONS

A. "Regular or Peak Hours": The hours of 7:00 a.m. to 11:00 p.m. (based on Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently applicable)

B. "Non-Peak Hours": All other hours in a day that are not "Peak Hours."

C. "Non-Critical System Maintenance": Maintenance that is not necessary to maintain the integrity of data or system stability.

D. "Critical System Maintenance": Maintenance that is necessary to maintain the integrity of data or system stability.

E. "Critical Problem": Any problem encountered by Customer that materially and adversely interferes with Customer's use of emsCharts, emsCharts Pocket, and emsCharts Mobile

F. "Non-Critical Problem": Any problem encountered by Customer involving the use of emsCharts, emsCharts Pocket, and emsCharts Mobile that does not materially or adversely interfere with Customer's use.

II. MAINTENANCE AND REMEDIAL WORK

A. Scheduled and Non-Scheduled Maintenance.

   1. Non-Critical System Maintenance. Vendor will use best efforts to carry out Non-Critical System Maintenance during Non-Peak hours. If downtime is anticipated to be less than 15 minutes, at least 4 hours prior notice will be given as an application message on the system. If downtime is anticipated to be between 16 and 90 minutes, at least 24 hours prior notice will be given using both application messages and email notification to the service administrator as listed by Customer in the application configuration. If downtime is anticipated to be greater than 90 minutes, at least 72 hours prior notice will be made using both application messages and email notification to the service administrator as listed in the application configuration.

   2. Critical System Maintenance. Critical system maintenance may be performed whenever it is deemed necessary by Vendor to maintain the integrity of data or the stability of the system.

B. Remedial Work.

  1. Critical Problem. In the event of a critical problem, Vendor will use all efforts to correct a verifiable, reproducible problem within 1 business day (i) after Customer reports such problem to Vendor; or (ii) after detection by Vendor.

  2. Non-Critical Problem. In the event of a non-critical problem, Vendor will use reasonable efforts to correct a verifiable, reproducible non-critical problem within 5 business days (i) after Customer reports such problem to Vendor; or (ii) after detection by Vendor.

  3. Exclusions. Vendor's obligations to correct problems, make repairs, provide maintenance or provide other services (the "remedial work") shall not include:

      (a) remedial work for anything other than to emsCharts, emsCharts Pocket, and emsCharts Mobile software.

      (b) Any remedial work in any way required by or related to the following:

          (1) Customer or Customer's representative's designs, specifications or instructions;

          (2) Customer failure to fulfill any of Customer obligations or responsibilities under the Agreement;

          (3) Failure by Customer to comply with Vendor's written instructions or recommendations;

          (4) Customer or any Customer's designated third party using or combining any component of emsCharts, emsCharts Pocket, and emsCharts Mobile with any incompatible product or service that does not properly exchange data with emsCharts;

          (5) Alteration or improper use of emsCharts, emsCharts Pocket, and emsCharts Mobile by Customer or others;

          (6) A failure to use or install error corrections, repairs, updates or upgrades or take other reasonable actions recommended by Vendor so that products functions properly;

          (7) Customer's own hardware, software, equipment or facilities

          (8) Design or manufacturing defects in any products or services not made and provided by Vendor;

(9)   A failure of a Customer local area network or wide area network that prevents the transmission of data intended for review at the destination. This includes any disruptions of Customer telephone lines, Customer ISP connections to the Internet and any electronic delivery systems that constitute the "Internet backbone."

(10)   Anything beyond Vendor's reasonable control. This includes, but is not limited to, any acts of God, widespread power outages or telecommunication disruptions, and/or the illegal activity of virus writers and/or "hackers" who deliberately produce material/actions that disrupt the connectivity between Customer and Vendor, including a denial of service attack.

(11)   Any planned downtime or maintenance communicated by Vendor to Customer. Communication may include notices on Vendor's web site.

III.   SERVICE LEVEL COMMITMENT

A.   <u>Availability Commitment - Definition and Calculation.</u>   emsCharts shall be Available for Customer Usage 98% of the time during any one calendar month. "Available for Customer Usage" means that emsCharts is functioning and is not subject to "Downtime." "Downtime" equals the time during which emsCharts is functioning with a Critical Problem or not functioning due to a Critical Problem. Downtime will commence when Customer notifies Vendor that emsCharts is unavailable for use as a result of a Critical Problem. Downtime will end as soon as the Critical Problem is cured and emsCharts is available for use without a Critical Problem.

Vendor will maintain, and provide upon request to Customer, a Services Service Level log documenting Service Level performance including all data required to calculate Availability.

B.   <u>Availability Commitment - Performance and Remedy.</u>   In the event that Vendor does not meet its Availability Commitment during any calendar month during the Term, Customer's next monthly invoice shall be reduced by 10% plus an additional 1% for each 1% increment below the Availability Commitment.

C.   <u>Reliability Commitment - Definition and Calculation.</u> Reliability, for purposes of this Agreement, is defined as the number of consecutive calendar months during the Term of this Agreement when emsCharts' Availability Commitment is not met.

Vendor will maintain, and provide upon request to Customer, a Services Service Level log documenting Service Level performance including all data required to

calculate Reliability.

D. **Reliability Commitment - Performance and Remedy.** In the event that emsCharts does not meet its Reliability Commitment during the Term, the following remedies will be available to Customer and enforceable at the Customer's discretion:

1. emsCharts does not meet Availability Commitment (regardless of by what %) for two (2) consecutive months: 25% reduction (above Availability remedy) in next monthly invoice.

2. emsCharts does not meet Availability Commitment (regardless of by what %) for three (3) consecutive months: 40% reduction (above Availability remedy) in next monthly invoice.

3. emsCharts does not meet Availability Commitment (regardless of by what %) for four (4) consecutive months: Vendor is in default of Agreement and Customer may exercise any available remedy for Early Termination at its sole discretion or may take a 50% reduction (above Availability remedy) in next monthly invoice.

The remedies provided to Customer under this Section III.D. are in the form of liquidated damages against Vendor. The above liquidated damages are in addition to actual and direct damages that the Customer may pursue as noted elsewhere in this Agreement.

ATTACHMENT B
HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement (the "BA Agreement") supplements and is made a part of the emsCharts Service Agreement (the "Agreement") by and between **Williamson County EMS, acting by and through Williamson County, Texas, a political subdivision of the State of Texas** (the "Covered Entity") and emsCharts, Inc. (the "Business Associate").

WHEREAS, pursuant to the terms of the Agreement, Covered Entity will be utilizing Business Associate's emsCharts website to enter, store, manipulate and process certain information, some of which may constitute Protected Health Information ("PHI") (defined below); and

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws; and

WHEREAS, as part of the HIPAA Regulations, the Privacy Rule (defined below) requires Covered Entity to enter into a contract with Business Associate containing specific provisions, including, without limitation, provisions satisfying the requirements set forth in Title 45, Sections 164.502(e) and 164.504(e) of the Code of Federal Regulations ("CFR"), prior to the disclosure of PHI;

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this Business Associate Agreement, the parties intending to be legally bound, agree as follows:

Section 1.   Definitions.

1.1   **Designated Record Set.** "Designated Record Set" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR ' 164.501.

1.2   **Individual.** "Individual" shall have the same meaning given to such term in 45 CFR ' 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR ' 164.502(g).

1.3   **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR parts 160 and 164, subparts A and E.

1.4   **Protected Health Information.** "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 CFR '164.501, limited to the information created or received by Business Associate from or on behalf of CE.

1.5 **Required By Law.** "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR ' 164.501.

1.6 **Secretary.** "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.

Section 2. Obligations and Activities of Business Associate.

2.1 **Non-Disclosure.** Business Associate shall not use or disclose PHI except as permitted or required under the Agreement, this BA Agreement or as Required By Law.

2.2 **Appropriate Safeguards.** Business Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of PHI other than as permitted by the Agreement, this BA Agreement or as Required By Law.

2.3 **Reporting of Improper Use or Disclosure.** Business Associate shall report to Covered Entity any suspected or actual use or disclosure of PHI of which Business Associate becomes aware that is not provided for by the Agreement, this BA Agreement or as Required By Law.

2.4 **Business Associate's Agents.** Business Associate shall ensure that any agent, including a subcontractor, to whom it provides access to PHI agrees to the same restrictions and conditions that apply to Business Associate pursuant to the Agreement or this BA Agreement with respect to such information.

2.5 **Duty to Mitigate.** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate, or any agent or subcontractor of Business Associate, in violation of the requirements of the Agreement or this BA Agreement.

2.6 **Access to PHI.** Business Associate shall make PHI maintained by Business Associate in a Designated Record Set available to Covered Entity for inspection and copying within ten (10) days of a request by Covered Entity, to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR ' 164.524.

2.7 **Amendment of PHI.** Under the Agreement, Covered Entity has full access to all PHI of its patients stored in emsCharts and shall, therefore, be able to fulfill its obligations under the Privacy Rules to amend a patient's PHI at the request of the patient. If any Individual requests an amendment of PHI, or a record about the Individual, contained in a Designated Record Set directly from Business Associate or its agents or subcontractors, Business Associate shall notify Covered Entity in writing within five (5) days of the request. Covered Entity shall have sole authority and responsibility to approve or deny such a request, and shall notify Business Associate, in writing, of its decision to approve or deny any such request.

2.8   Accounting for Disclosures.

(a)   The functionality of emsCharts allows Covered Entity to obtain information of all disclosures of PHI. Business Associate agrees to maintain such functionality to assure that Covered Entity shall have access to information related to disclosures of PHI as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR ' 164.528.

(b)   In the event that a request for an accounting is delivered directly to Business Associate or its agent or subcontractor by an Individual or a party other than Covered Entity, Business Associate shall within five (5) days of such request forward it to Covered Entity in writing.

(c)   To the degree necessary, Business Associate shall assist Covered Entity in obtaining and creating information related to the disclosures of PHI for any individual in the form and manner required by the Privacy Rule.

2.9   Governmental Access to Records.
Business Associate shall make its internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI available to the Secretary in a time and manner reasonable under the circumstances for purposes of determining Covered Entity's compliance with the Privacy Rule. Business Associate shall notify Covered Entity, in writing, of any request by the Secretary under this Section 2.9, and shall provide Covered Entity with a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary.

2.10   Inspection by Covered Entity.
Within ten (10) days of a written request by Covered Entity, Business Associate and its agents or subcontractors shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of PHI pursuant to this BA Agreement for the purpose of determining whether Business Associate has complied with this BA Agreement; provided, however, that (a) Business Associate and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection, (b) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection; and (c) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate.

Section 3.   Permitted Uses and Disclosures by Business Associate.

3.1   Business Associate may use and disclose PHI for the following purposes to the degree such purposes would not violate the Privacy Rule if done by Covered Entity:

(a)   to hospitals and other health care providers designated by Covered Entity as being organizations with which Covered Entity exchanges PHI for treatment purposes;

(b)   to users approved by Covered Entity ("Approved Users") as defined in the Agreement;

(c)   to report violations of law to appropriate federal and state authorities consistent with 45 CFR § 164.502(j)(i);

(d)   to carry out the legal responsibilities of Business Associates or for the proper management and administration of Business Associate.

3.2   To the extent that Business Associate discloses PHI to a third party to carry out the legal responsibilities of or for the proper management of Business Associate, Business Associate shall:

(a)   obtain prior reasonable assurances from such third party that such PHI will be held confidentially as provided pursuant to this BA Agreement and only used or disclosed as Required By Law or for the purposes for which it was disclosed to such third party;

(b)   have the third party agree to immediately notify Business Associate of any breaches of confidentiality of the PHI of which such third party becomes aware; and

(c)   only disclose to such third party the minimum amount of PHI necessary to accomplish the purpose of the disclosure.

3.3   Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

Section 4.   Obligations of Covered Entity.

4.1   Covered Entity shall be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Business Associate pursuant to the Agreement or this Business Associate Agreement, in accordance with the standards and requirements of the Privacy Rule, until such PHI is received by Business Associate.

4.2   Covered Entity shall be responsible to notify Business Associate whenever it desires to remove a hospital or other health care provider from Covered Entity's list of organizations with which Covered Entity exchanges PHI for treatment purposes.

4.3   Covered Entity shall be responsible to do whatever is necessary to deny further access to PHI by any user who or that no longer should be entitled or authorized to access PHI. Business Associate shall be available, upon request, to help Covered Entity to limit PHI only to authorized users.

4.4.   Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522 to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

Section 5.   Term and Termination

5.1   **Term.** The term of this BA Agreement shall be co-terminus with the Agreement. However, the provisions of this BA Agreement shall continue so long as Covered Entity maintains access to any PHI belonging to Covered Entity.

5.2   **Termination for Cause.** Upon Covered Entity's knowledge of a material breach involving the use or disclosure by Business Associate of PHI in violation of the Privacy Rule, Covered Entity shall either:

(a)   provide an opportunity for Business Associate to cure the breach or end the violation within thirty (30) days. Covered Entity shall then have the right to terminate this BA Agreement and the Agreement if Business Association does not cure the breach or end the violation within the thirty (30) day period;

(b)   immediately terminate this BA Agreement and the Agreement if a cure is not possible; or

(c)   if neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.

5.3   **Effect of Termination.** Except as otherwise provided in this section, upon termination of this BA Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI. In the event that the Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide Covered Entity notification of the conditions that make return or destruction infeasible. Upon written verification by Covered Entity that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this BA Agreement to such PHI and limit further uses and disclosures of such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

Section 6.   Miscellaneous Provisions.

6.1   **Amendment.** The parties acknowledge that laws relating to data security and privacy are evolving and that amendment of the Agreement and/or this BA Agreement may be required to provide for compliance with such developments. The parties agree to take such action as is necessary to amend the Agreement or this BA Agreement from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA, the HIPAA Regulations, or any other state and/or federal law relating to data security and privacy.
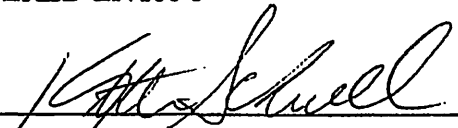
6.2   **Regulatory References.** A reference in this BA Agreement to a section in the HIPAA Regulations means the section as in effect or as amended.

6.3   **No Third-Party Beneficiaries.**   Nothing express or implied in this Agreement is intended to nor shall be construed to confer upon any person other than Covered Entity and Business Associate any rights, remedies, obligations or liabilities whatsoever.

6.4   **Interpretation.**   The provisions of this BA Agreement shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provision in this BA Agreement.   The parties agree that any ambiguity in this BA Agreement shall be resolved in favor of a meaning that allows Covered Entity to comply with HIPAA and the HIPAA Regulations.

6.5   **Survival.**   The respective rights and obligations of Business Associate under Section 5.3 shall survive the termination of this BA Agreement.
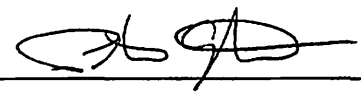
COVERED ENTITY   BUSINESS ASSOCIATE

By:_____   By:_____

Kenneth Schnell_____(Name)   Peter Goutmann_____(Name)

Director of Emergency Medical Services(Title) Vice President_____(Title)

Dated:___07/28/2008_____   Dated:_____7/25/08_____