

Digital EMS Subscription Agreement



SUBSCRIPTION AGREEMENT

This *Medic ClipBoard* Subscription Agreement ("Agreement") is between Digital EMS Solutions Incorporated ("Digital EMS") and the undersigned customer ("Customer").

1. *Medic ClipBoard*. ("System")

- 1.1. **Licensed Software.** The licensed software is the *Medic ClipBoard* system, a system comprising of multiple parts: an iOS (Apple's mobile operating system) application ("Front-End") that performs reporting of patient information, a web-based administrative support back-end ("Back-End") that performs data collection, analysis, and reporting over the Internet (the "Licensed Software") for the Emergency Medical Services (EMS) industry. Digital EMS Solutions Inc. owns all the rights to this software.
- 1.2. **Professional Services.** Digital EMS makes available many professional services ("Professional Services") per Section 4 to help maximize your investment in Digital EMS. Services include, but may not be limited to, Application Support, Classroom Training, Educational Resources, and Custom Programming to the System.
- 1.3. **System Integration Services.** Digital EMS integrates the System with many third-party systems, such as CAD (Computer-Aided-Dispatch), medical devices, billing, and local reporting systems. These integration services may be provided on a fee-for-services basis or may be included in the Subscription Fees, and/or evaluated on a case-by-case basis.
- 1.4. **Data Collection Services.** Digital EMS provides the System as a flexible data collection solution for the Customer using the proprietary electronic Patient Care Report ("ePCR") using mobile hardware and a secure file transfer that uploads data via the Internet (the "Data Collection Services"). Certain Data Collection Services require the Customer to procure and support hardware that meets the specifications set forth by Digital EMS. Digital EMS shall not be responsible for any loss or damages caused by the failure or nonperformance of any of the System described herein, and license fees due pursuant to Section 2 of this Agreement shall continue to accrue notwithstanding to any period of downtime caused thereby.
- 1.5. **Data Center Services.** The Data Center ("Data Center") is comprised of infrastructure and services that host, manage, and support the System. Digital EMS is responsible for the Data Center as defined in Section 5.2 up to the point of external Internet access. It is the responsibility of the Customer to procure applicable hardware, software, and Internet Connectivity with sufficient bandwidth to meet the user demands. Digital EMS uses a third party Business Associate to handle the Data Center and hardware that support the Back-End part of the System. Digital EMS will do its due diligence to uphold this Agreement as defined herein.

2. INITIAL SETUP

- 2.1. **Customer's Responsibilities for Setup.** Customer must provide Internet connectivity to the System with sufficient bandwidth to meet the Customer's utilization demands. System performance is a function of bandwidth and latency time from client hardware to the System. Customer must connect to Back-End with a web browser that will support the latest web technologies (e.g. HTML5). If the Customer is using Internet Explorer, the Customer must use version 8.0 or greater.
- 2.2. **Customer Passwords.** Both a login identity and a password are necessary to access the System Back-End through a web browser. The password provides a vital security in preventing unauthorized access to the Customer's Data and Confidential Information. Customer is responsible for keeping and maintaining the security of the passwords that are assigned to the Customers employees. Digital EMS

shall have no responsibility for the unauthorized access to the Customer's Data or Confidential Information that results from the Customer's Failure to keep secure the assigned passwords.

- 2.3. System Activation Date.** The System Activation Date ("Activation Date") is defined in Schedule P. The System Activation Date is the date at which Digital EMS will activate the System to allow for Customer set-up of the Licensed Software via the Data Center.
- 2.4. System Go-Live Date.** The System Go-Live Date ("Go-Live") is defined in Schedule P. The Go-Live date is the date at which the Customer has properly set up their Back-End, the Customer's employees have been trained in the use of the System, and the Customer is ready for live field use of the System.

3. LICENSE AND FEES

- 3.1. License.** Digital EMS hereby grants the Customer a non-exclusive, non-transferable, license to access the System on their iOS hardware and over the Internet, based on the payment of the Customer's subscription fees as set forth in Schedule P.
- 3.2. Fees.**
- 3.2.1. System Set-Up Fees.** System Set-Up Fees are the one-time per Provider initial System Activation and Provider Set-up as set forth on Schedule P.
- 3.2.2. Subscription Fees.** Customer agrees to pay Subscription Fees as set forth on Schedule P, which forms a part of this Subscription. Fees include: Data Center Services, Data Collection Services, Application Licensing, System Maintenance, and Application Support. System Upgrades are the sole prerogative of Digital EMS.
- 3.2.3. Invoicing.** Following the identification of Customer's System Go Live Date as set forth in Schedule P, Digital EMS will invoice the Customer for Subscription Fees in subsequent years on the Go Live anniversary date.
- 3.2.4. Payment.** Year-One initial payment from Customer is due upon acceptance of this Agreement and all fees must be paid as set forth on Schedule P. For subsequent years, payment is due upon receipt of invoice and payment shall be made no later than 30 calendar days from the date the invoice is received.
- 3.2.4.1.** Year-One pricing will be based on the average emergency medical reports for the preceding year. At the conclusion of Year-One, the difference between the estimate and the actual electronic Patient Care Reports ("ePCRs") uploaded will be calculated and the difference resolved at the agreed rate for Year-One. The difference shall be credited or paid to the respective party within 30 calendar days.
- 3.2.4.2.** Year-Two pricing will be based on the actual electronic Patient Care Reports ("ePCRs") that are uploaded to the server during Year-One. At the conclusion of Year-Two, the difference between the estimate and the actual reports uploaded will be calculated and the difference resolved at the agreed rate for Year-Two. The difference shall be credited or paid to the respective party within 30 calendar days.
- 3.2.4.3.** Year-Three pricing will be based on the actual electronic Patient Care Reports ("ePCRs") that are uploaded to the server during Year-Two. At the conclusion of Year-Three, the difference between the estimate and the actual ePCRs uploaded will be calculated and the difference resolved at the agreed rate for Year-Three. The difference shall be credited or paid to the respective party within 30 calendar days.
- 3.2.5. Taxes.** In the future, Digital EMS may be required to collect sales tax from products and services provided to customers in the state of California. Digital EMS reserves the right to invoice the Customer those taxes that are imposed by any governmental authority upon the sale or delivery of items purchased or licensed. Customer shall only be responsible for any penalties or accruing interest respective to non-payment of Customer sales tax fees. Customer shall be held harmless by Digital EMS from penalties or accruing interest for failure of Digital EMS to pay sales tax.
- 3.2.6. Interest and Costs.** Amounts not paid within 30 days of due date will bear interest at the rate of 2.0% annum on the unpaid balance each month, or such lesser rate of interest as shall be the maximum amount chargeable with respect to this account under the law in the effect in the state of California. In the event of non-payment or default by the Customer, Customer agrees that Customer will pay reasonable costs of enforcement and collection, including reasonable attorney's fees.

4. PROFESSIONAL SERVICES

- 4.1. **Application Support.** Digital EMS provides phone and email Application Support of the System at no additional cost to Customers who have completed Train-the-Trainer Classroom Training and are active Users. Application support is defined as help with application navigation or troubleshooting arising from the use of the System, as designed. Digital EMS's phone support will provide unlimited Customer support during the hours of 8:00 am - 5:00 pm PST. After-hour System support consists of a voice-messaging system in which the Customer will be required to leave a message containing a brief synopsis of the issue, and a contact name and number. It is Digital EMS's goal to return after-hour messages within one hour of receiving them or first thing in the morning for late night calls. As to avoid many calls from the Customer's employees, the Customer will designate one to five employees who will act as the point of contact between Digital EMS and the Customer. Application Support excludes supporting Customer procured hardware, OS and Internet connectivity.
- 4.2. **Classroom Training.** Digital EMS offers training regarding the use of the System for the benefit of its Customers. Training will be offered at the rate defined in Schedule P. Should the Customer, at a later date, require additional Training, it will be the Customer's responsibility to pay for the requested additional training.
- 4.3. **Custom Programming.** If the Customer desires to have the System perform in a way that is not already included in the System, this will require Digital EMS to perform Custom Programming ("Custom Programming"). The Customer will provide Digital EMS with an outlined requirement of such Custom Programming requirements, and will be responsible for obtaining the necessary Non-Disclosure Agreements ("NDA") for any third party vendor that the Customer wishes to have the System integrate with. Digital EMS will, at the request of the Customer, provide the Customer with the estimated Custom Programming quote after Digital EMS has assessed the necessary Custom Programming time required to complete such requirements. Digital EMS will not begin work on the said Custom Programming until the Customer has agreed to enter into a Software Development Agreement ("SDA") with Digital EMS. Digital EMS will charge the customer at the standard rate as defined below. The SDA is not included within this Agreement, and is a separate Agreement that the Customer will enter into with Digital EMS should the Customer request Custom Programming to be done by Digital EMS.
- 4.3.1. **Developer's Services.** Digital EMS shall provide to Customer professional services in the area of software development, human user interface design, graphic design, web page design, application design and development, mobile device application design or development, project management, testing & QA, research or any other consulting, development, management, software or graphic services.
- 4.3.1.1. **HOURLY RATE.** In consideration of the Services to be performed by Developer under this Agreement, Client will pay Developer for time spent on Services, at the following rates:
- \$100 per hour Web Development, \$125 per hour Mobile Development

5. DATA CENTER SERVICES

- 5.1. **System Maintenance.** Digital EMS will provide software upgrades and system enhancements when Digital EMS determines the upgrades are necessary and/or desirable for the Customer. Digital EMS will coordinate the installation of software upgrades and system enhancements for Customer at no charge to the Customer. Should Digital EMS decide that upgrades or enhancements to the System are needed and/or desired, Digital EMS will notify the customer one week in advance if the said upgrade or enhancement will cause an interruption to any part of the System. If the said upgrade or enhancement is to be made to the Front-End, explicit instructions will be sent to the Customer on how to do the said upgrade or enhancement as to minimize impact to the Customer's business activity.
- 5.2. **System Access Level.** Digital EMS is not responsible for loss of access to the Data Center for reasons that are beyond Digital EMS's reasonable control. With the exception for loss of access that is beyond Digital EMS's reasonable control, Digital EMS shall maintain a level of access to the Data Center (excluding periods of scheduled or emergency maintenance) of 99.8% Access Availability ("Access Availability"), 24 hours a day, 7 days a week, including holidays. System Access Unavailable ("System Access Unavailable")

is defined as the reported unscheduled inability of users of the Customer to access the Data Center and verification that the problem is within the Data Center.

6. TERM AND TERMINATION

- 6.1. Term Initiation.** This agreement takes effect on the latest signature date below and continues through the conclusion of the Subscription Term or any subsequent renewed Subscription Terms. The Subscription Term (the "Term") begins on the System Activation Date and ends at the conclusion of the period set forth in Schedule P or any subsequent renewed Subscription Terms. Subscription Fees commence on the Go Live Date and continue throughout the Term of this Agreement. Upon acceptance of this Agreement, Digital EMS will provide Customer with the appropriate login credentials to use the Licensed Software via Digital EMS's Data Center and the Internet.
- 6.2. Term Renewal.** This agreement may be renewed upon such terms and for such period set forth in a new Schedule P (the "Renewal Schedule P") provided by Digital EMS and executed by Customer within thirty (30) days before the end of the then current Term. If Customer does not execute the Renewal Schedule P, this agreement shall automatically terminate upon expiration of the then current Term. When the conclusion of the period as set forth in Schedule P is nearing ninety (90) days from the Term conclusion, Digital EMS will issue a Renewal Schedule P to the Customer.
- 6.3. Termination.** Either party may terminate the Agreement upon the other party's material breach of this Agreement, if within 30 days of receipt of written notification of breach (10 days in the case of non-payment), the breaching party has failed to cure its breach. Digital EMS may terminate Customer's access to the System immediately upon Termination of the Agreement. In the event of early Termination due to material breach by the Customer, Customer shall be responsible for Early Termination Fee per Section 6.4 of this Agreement. In the event of early Termination due to material breach by Digital EMS, Customer shall not be responsible for Early Termination Fee as set forth in Section 6.4. Notwithstanding anything in this Section 6 or in this Agreement to the contrary, Customer may terminate this Agreement and Customer obligations hereunder during the initial Term or any subsequent renewal Term, without cause, for any reason, or for no reason, and in Customer's sole and absolute discretion by payment to Digital EMS of the Early Termination Fee as set forth in Section 6.4. Digital EMS acknowledges and agrees that payment of such Early Termination Fee shall be Digital EMS's sole remedy therefore.
- 6.4. Early Termination Fee.** Customer agrees to pay all fees as stipulated on the Schedule P on an annual basis throughout the term of the Agreement. Upon early Termination of the Agreement, all records uploaded to the system will be prorated at the standard fee as stipulated on Schedule P and any remaining balance will be refunded to the customer.

7. PROPRIETARY RIGHTS OF DIGITAL EMS IN THE LICENSED SOFTWARE

- 7.1. Nature of Rights and Title.** Customer acknowledges that the System and System documentation manuals and other proprietary information, materials supplied by Digital EMS to Customer are and shall remain the property of Digital EMS and nothing in this Agreement shall be construed as transferring any aspect of such Customer or any third party. Any changes, additions, and enhancements in the form of a new or partial programs or documentation as may be provided under this Agreement shall remain the proprietary property of Digital EMS. Customer agrees with Digital EMS that the System documentation and all other proprietary information or data supplied by Digital EMS are trade secrets of Digital EMS, are protected by criminal and civil law, and by the law of copyright, are valuable to Digital EMS, and that their use and disclosure must be carefully and continuously controlled. Customer shall keep each and every item to which Digital EMS retains title free and clear of all claims, liens, and encumbrances except those of Digital EMS and any act of Customer, voluntary or involuntary, purporting to create a claim, lien or encumbrance on such an item shall be void.
- 7.2. Unauthorized Acts.** Customer agrees to notify Digital EMS promptly of the unauthorized possession, use, or knowledge of any item supplied under this license and of other information made available to Customer under this Agreement, by any person or organization not authorized by this Agreement to have such possession, use, or knowledge. Customer will promptly furnish full details of such

- 7.3. possession, use or knowledge to Digital EMS, will assist in preventing the continuation or recurrence of such possession, use or knowledge, and will cooperate with Digital EMS in any litigation against third parties deemed necessary by Digital EMS to protect its proprietary rights. Customer's compliance with this subparagraph shall not be construed in any way as waiver to Digital EMS's right, if any, to recover damages or obtain other relief against Customer for its negligent or intentional harm to Digital EMS's proprietary rights, or for breach of contractual rights.
- 7.4. **Remedies.** If Customer attempts to use, copy, license, sub-license or otherwise transfer the Licensed Software or access to the System supplied by Digital EMS under this Agreement, in a manner contrary to the terms of this Agreement or in competition with Digital EMS or in derogation of Digital EMS's proprietary rights, whether these rights are explicitly stated, determined by law, or otherwise, Digital EMS shall have all remedies available in law and equity.
- 7.5. **Infringement Indemnification.** Digital EMS shall indemnify, defend and hold harmless Customer from and against any and all loss, cost, damage, or liability, including reasonable attorneys' fees and expenses, arising out of or relating to any claim or cause of action for patent, copyright, and/or other intellectual property infringement. ("Infringement Claim") asserted against Customer by virtue of the System, Software or Documentation or Customer's use of possession of the System, Software or Documentation pursuant to this agreement. Digital EMS shall defend and settle at its sole expense all suits and proceedings arising out of the foregoing, providing that Customer gives Digital EMS prompt written notice of any such Infringement Claim of which it learns. In all events, Customer shall have the right to participate at its own expense in the defense of any such suit or proceeding through counsel of its own choosing. In the event any Infringement Claim is asserted by a third party with respect to the System or Customer's use thereof, then and in that event, Customer may terminate its use of the System and/or this Agreement without payment of any Early Termination Fee.

8. LIMITED WARRANTY

- 8.1. **Software.** For duration of this Agreement (the "Warranty Period"), Digital EMS will checkout, document and deliver any amendments or alterations to the License Software that may be required to correct errors which significantly effect performance. This warranty is contingent upon the Customer advising Digital EMS in writing of such errors. Digital EMS shall not be responsible for maintaining Customer-modified portions of the License Software. Corrections for difficulties or defects traceable to Customer errors or System changes will be billed at the standard Digital EMS time and materials rates.

THE LIMITED WARRANTY SET FORTH IN THE AGREEMENT IS THE ONLY WARRANTY MADE BY DIGITAL EMS. DIGITAL EMS EXPRESSLY DISCLAIMS, AND CUSTOMER HERBY EXPRESSLY WAIVES, ALL OTHER WARRANTIES EXPRESS, IMPLIED OR STATUTORY, INCLUDING WARRANTIES OF MERCHANTABILITY. DIGITAL EMS DOES NOT WARRANT THAT THE LICENSED SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT, EXCEPT AS REQUIRED HEREIN TO ADDRESS ERRORS THAT SIGNIFICANTLY EFFECT PERFORMANCE, ERRORS IN THE LICENSE SOFTWARE WILL BE CORRECTED. DIGITAL EMS' LIMITED WARRANTY IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF DIGITAL EMS FOR THE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE INSTALLATION, USE OR PERFORMANCE OF THE SYSTEM.

9. DATA

- 9.1. **Use.** Customer grants Digital EMS a perpetual, royalty-free license to compile, analyze, use and distribute de-identified aggregated data derived from information and data obtained through the Customer's use of the System during the Term. Digital EMS represents and warrants that it will only employ methods to de-identify the data that do not involve actual disclosure or Protected Health Information to Digital EMS.
- 9.2. **Backups.** Customer's full data will be backed up on a daily basis with a fourteen (14) day retention of said backup. Digital EMS will maintain the copy of the full backup for a period of fourteen (14) days at which time it will be deleted to ensure space for the following fourteen (14) days of backup data. Customer's backup(s) will be maintained on a rolling basis and Digital EMS will not be responsible for archiving more than the most recent fourteen (14) days of full backup data. Digital EMS will take

commercially reasonable steps to maintain data integrity of any backup, but Digital EMS is not responsible for loss of data or data integrity so long as Digital EMS has performed the backup in a commercially reasonable manner.

10. BUSINESS ASSOCIATE AGREEMENT

This business associate Agreement ("Agreement"), effective as of Activation Date, is entered into by and between Digital EMS ("Business Associate") and Customer (the "Covered Entity").

10.1. DEFINITIONS

- 10.1.1. Business Associate. "Business Associate" shall mean Digital EMS.
- 10.1.2. Covered Entity. "Covered Entity" shall mean Customer.
- 10.1.3. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- 10.1.4. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- 10.1.5. Protected Health Information. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- 10.1.6. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.103.
- 10.1.7. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

10.2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- 10.2.1. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.
- 10.2.2. Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement.
- 10.2.3. Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410, and any security incident of which it becomes aware.
- 10.2.4. Business Associate agrees to ensure that in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information.
- 10.2.5. Business Associate agrees to make available PHI in a designated record set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524
- 10.2.6. Business Associate agrees to make any amendment(s) to PHI in a designated record set as directed or agreed to by Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526
- 10.2.7. Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528
- 10.2.8. Business Associate agrees to the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s); and
- 10.2.9. Business Associate agrees to make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

10.3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- 10.3.1. Business Associate may only use or disclose PHI only as permitted or required by this Agreement or as required by law
- 10.3.2. Business Associate may use or disclose PHI as required by law.
- 10.3.3. Business Associate agrees to make uses and disclosures and requests PHI consistent with Covered Entity's minimum necessary policies and procedures.
- 10.3.4. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth below.
- 10.3.5. Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- 10.3.6. Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- 10.3.7. Business Associate may provide data aggregation services relating to the health care operations of the Covered Entity.

10.4. OBLIGATIONS OF COVERED ENTITY

- 10.4.1. Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- 10.4.2. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- 10.4.3. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

10.5. PERMISSIBLE REQUESTS BY COVERED ENTITY

Covered entity shall not request business associate to use or disclose protected health information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by covered entity. An exception is if the Business Associate will use or disclose protected health information for, data aggregation or management and administrative activities of Business Associate.

10.6. TERM AND TERMINATION

- 10.6.1. **Term.** The Term of this Agreement shall be effective as of Activation Date, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- 10.6.2. **Termination for Cause.** Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - 10.6.2.1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - 10.6.2.2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or

- 10.6.2.3. If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.

10.6.3. Effect of Termination

- 10.6.3.1. Except as provided in paragraph 10.6.3.2 of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- 10.6.3.2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon sixty (60) days that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

10.7. MISCELLANEOUS

- 10.7.1. **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- 10.7.2. **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- 10.7.3. **Survival.** The respective rights and obligations of Business Associate under Section 10.6.3 of this Agreement shall survive the termination of this Agreement.
- 10.7.4. **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

11. GENERAL

Section 11 sometimes refers to Digital EMS and Customer as each a "Party" and collectively the "Parties".

- 11.1. **Amendment.** This Agreement can only be modified by a written agreement duly signed by persons authorized to sign agreements on behalf of Customer and of Digital EMS, and variance from the terms and conditions of this Agreement in any order or other written notification from the Customer will be of no effect.
- 11.2. **Severability.** If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or imparted thereby.
- 11.3. **Applicable Law.** This Agreement shall, in all respects, be interpreted, construed, and governed by and under the domestic laws of the State of California. Any judicial or arbitral proceedings brought to interpret or enforce this Agreement shall be brought in the County of Los Angeles, State of California.
- 11.4. **Entirety of Agreement.** Digital EMS and Customer hereto acknowledge and agree that this instrument and other instruments specifically referred to herein, if any, constitute and contain the entire Agreement and understanding concerning the subject matter between Digital EMS and Customer and supersede and replace all prior negotiations and proposed agreements, whether written or oral. Each of the parties warrants that no other party or any agent or attorney of any other party has made any promise, representations, or warranty whatsoever not contained herein to induce it to execute the Agreement and the other documents referred to herein, if any. Each of the Parties represents that they have not executed this Agreement in reliance on any promise, representation, or warranty whatsoever not contained herein, to induce them to execute this Agreement and the other documents referred to herein, if any. Each of the

Parties represents that he has not executed this Agreement or the other documents, if any, in reliance on any promise, representation, or warranty not contained herein.

- 11.5. **Headings.** The various headings used in this Agreement are inserted for convenience only, and do not vary the meaning of the Agreement.
- 11.6. **Signature.** This Agreement may be executed in counterparts, and any signature evidenced by facsimile or scanned and emailed shall have the same validity as an original ink signature.

The Subscription Agreement shall be from July 1, 2017 to June 30, 2018

IN WITNESS HEREOF, Digital EMS Solutions Inc. and Customer shall execute this Agreement by their signatures listed herein below.

	Customer	Digital EMS
Customer Name:	<u>Burbank Fire Department</u>	
Signature:	<u>[Signature]</u>	<u>[Signature]</u>
Printed Name:	<u>Tom Lenahan</u>	<u>Ricky Olivarez</u>
Printed Title:	<u>Fire Chief</u>	<u>CEO</u>
Date:	<u>6/20/17</u>	<u>6/15/17</u>

Address: 311 East Orange Grove Ave
 City: Burbank
 State / Zip: CA, 91502

Digital EMS Solutions Inc.
 34 Savona Walk
 Long Beach, CA 90803
 Tax Payer ID: 27-2674189

[Signature]
 Joseph H. McDougall
 Senior Assistant City Attorney

ATTEST:
 Date: 7-5-17
[Signature]
 City Clerk
 City of Burbank, California

City of Burbank
 Signature: [Signature]
 Name: PAUL HERMAN
 Title: PURCHASING MGR
 Date: 7/13/17

2017 JUL -5 PM 1:13
 PURCHASING DIV.
 CITY OF BURBANK



- Schedule P Renewal -

Prepared For: **City of Burbank Fire Department**
 Proposal Valid: **April 01, 2017 to June 30, 2017**
 Contract Term: **July 01, 2017 to June 30, 2018**

Subscription Fees & Projected Cost

Medic ClipBoard Subscription Fees

July 1, 2017 to June 30, 2018

Description	Standard Rate	Discount Rate	Projected PPU	Fee
The projection for the price per incidents uploaded (PPU) is based on uploads from 03-01-2016 to 02-28-2017. This does not include any potential credit or additional PPU charges that may be incurred from current contract.	\$5.00 per PPU	\$4.25 per PPU	7560	\$32,130.00

Description	Rate	Term	Quantity	Fee
Faxing (Optional)	\$.10 per PPU	1 Year	7560	\$756.00

Grand Total \$32,886.00

The Schedule P Renewal subscription fee schedule is a component of the Subscription Agreement. All fees will be invoiced in July of each year of the agreement according to the timeframe indicated in the schedule.

The undersigned agrees to the terms identified in the Schedule P Renewal subscription fee schedule.

City of Burbank Fire Department

[Handwritten Signature]
 Authorized Customer Signature / Date

Tom Lenahan, Fire Chief
 Printed Name / Title

Digital EMS Solutions Inc.

[Handwritten Signature] 04-01-2017
 Authorized Digital EMS Solutions Inc. Signature / Date

Ricky Olivarez, CEO
 Printed Name / Title

City of Burbank
 Signature: *[Handwritten Signature]*
 Name: **PAUL HERMAN**
 Title: **PURCHASING MGR**
 Date: **7/13/17**