

A Services Agreement
Between
Emergency Management Resources, LLC
and the
County of Montgomery

THIS AGREEMENT ("the Agreement") is effective the _____ day of _____, 2023 (the "effective date") and is by and between Emergency Management Resources, LLC ("EMR"), a limited liability company organized under the laws of the State of New York, PO Box 787 Latham NY 12210 and Montgomery County ("The Ambulance"), duly certified as a New York State ambulance service in accordance with the provisions of Article 30 of the Public Health Law, and having a principal place of business at 64 Broadway Fonda, NY 12068-1500, and collectively herein known as the "Parties"

RECITALS

WHEREAS, EMR has developed expertise in consulting, ambulance billing, accounts receivable, contract negotiation and other ambulance service administrative related skills and services (the "Services"), and which Services EMR desires to provide to The Ambulance and

WHEREAS, The Ambulance desires to engage EMR for the purpose of having EMR provide such Services, as more specifically set forth hereinafter, all upon the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which each of the Parties acknowledge, and the Parties intending to be legally bound, the Parties hereby agree as follows:

1. THE SERVICES. The Ambulance hereby appoints and employs EMR to supervise and perform certain aspects of management and operation of The Ambulance in accordance with and subject to the specific terms and conditions set forth in this Agreement, and EMR hereby accepts such appointment and employment, upon the terms and conditions set forth in this Agreement. EMR agrees to provide The Ambulance the following Services under the terms and conditions of this Agreement and as specifically provided for by The Ambulance and EMR.

(a) Billing and Collection. EMR will provide billing and accounts receivable collection services including, without limitation, billing patients of The Ambulance for services rendered, making claims for reimbursement from Medicare, Medicaid, and other third-party payers. The Ambulance appoints EMR for the term hereof to be their true and lawful agent, for the following purposes:

(i) To bill patients in the name and provider number of The Ambulance and on its behalf;

(ii) To collect accounts receivable resulting from such billing in the name of The Ambulance;

(iii) To collect and receive payments from insurance companies, Medicare, Medicaid, all other third-party payers and patients;

(iv) To either work with the Ambulance's financial institution that receives payments and correspondence from insurance carriers, or to actually take possession of and endorse in the name of The Ambulance, such payment intended for purpose of payment of an ambulance bill, any notes, checks, money orders, insurance payments, and other instruments received in payment of accounts receivable and deposit all monies resulting from the operation of the billing program into a bank account registered to The Ambulance. In either case, Authorized signers of this account are members, officers, or employees of The Ambulance; EMR will have no access to this bank account;

(v) To assist legal Counsel retained by The Ambulance, only upon prior written authorization from The Ambulance, with the institution of legal or administrative proceedings in the name of The Ambulance to collect any accounts and monies owed to The Ambulance, to enforce the rights of The Ambulance as a creditor under any contract or in connection with the rendering of any service, and to contest adjustments and denials by governmental agencies (or its fiscal intermediaries) as third-party payers.

(vi) Make adjustments for uncollectible accounts in a reasonable and consistent manner as approved by The Ambulance. All adjustments made for professional courtesies and other activities that do not generate a collectible fee shall be done in accordance with the direction of The Ambulance. EMR will not be responsible for initiating any collection procedures to the patient other than written follow up notices or direct phone calls, unless both Parties otherwise agree in a separate written agreement.

(vii) For delinquent accounts, and only upon The Ambulance's prior written direction, refer claims to collection agencies and instituting legal proceedings in connection with any bill or claim

(viii) Within fifteen (15) days of the last business day of each month, EMR will provide to The Ambulance a complete written report for the preceding calendar month which summarizes all billing produced, number of accounts and dollar amounts of accounts collected, number of accounts and dollar amounts outstanding and number of accounts and dollar amounts closed for that month.

(c) Training/Consulting. EMR shall consult with and advise the Ambulance as to business issues relating to the training of the Ambulance staff as it relates to PCR billing operations, and the proper EMS charting documentation.

(d) Other Services. EMR shall, in addition to or in place of the foregoing, perform such other services as may be agreed by the Parties, at rates to be determined by the Parties at future point in time.

2. EXTRAORDINARY SERVICES. Whenever EMR determines that services not included in The Services defined in Paragraph 1, and its subparts, of this Agreement are necessary or desirable for the efficient, economic and profitable operation of The Ambulance ("Extraordinary Services"), EMR shall advise The Ambulance of the need and cost therefore and make recommendations related thereto. EMR shall perform such Extraordinary Services only in accordance with a separate written agreement reached between the Parties.

3. ASSUMPTION/QUALIFICATION OF DUTIES. EMR, in order to relieve The Ambulance, to the maximum extent possible, of the billing and collection aspects of the EMS service, included within the Services above described, expressly assumes the foregoing duties and responsibilities as provided for herein. The foregoing notwithstanding, EMR shall not have any authority, directly or indirectly, to perform, and will not perform, any medical or clinical function. EMR may, however, advise The Ambulance as to the relationship between their performance of medical/clinical functions and the overall administrative and business functioning of the EMS service. Notwithstanding the above limitation, individual member/owners or employees of EMR may in their individual capacities perform EMS provider services as a member or employee of The Ambulance.

4. COMPLIANCE WITH APPLICABLE LAWS. EMR, as it performs the Services and its obligations hereunder, notwithstanding any other provision of this Agreement to the contrary or otherwise and regardless of how directly and specifically such provision addresses the conduct, right, or duty at issue, shall comply with all applicable CMS, HIPAA, DOH, JCAHO, federal, state, and local laws, regulations, and restrictions in the exercise of its rights and conduct of its obligations under this Agreement.

5. GENERAL MUNICIPAL LAW. As an inducement to EMR to enter this Agreement, The Ambulance represents to EMR that The Ambulance is not subject to the restrictions on billing for ambulance or rescue services set forth in New York General Municipal Law, Section 209-b and that The Ambulance is entitled and authorized under New York Law to bill for services.

6. RESPONSIBILITIES OF THE AMBULANCE / ACKNOWLEDGMENTS OF EMR

(a) Patient Care Records. The Ambulance shall complete all PCRs in a timely manner, including all supporting documentation, patient signatures, hospital face sheets, and PCSs for non-emergency transports. The Ambulance also agrees that it will not submit any pre-hospital care report to EMR that violates any New York State or Federal law or regulation governing Social Security, Medicare or Medicaid, and that the U.S. Department of Health, or its designee, and any Payer to which The Ambulance submits claims through EMR may audit The Ambulance, and the records relating to EMR's services for The Ambulance, and to provide such information, as requested, to the requesting entity. EMR acknowledges that all such medical records shall be the property of The Ambulance.

(b) Billing/Reimbursement. The Ambulance shall cooperate with EMR in order to assist EMR in performing its duties under this Agreement and in resolving any

reimbursement or coverage problems encountered by EMR in its billing of third-party payers under this Agreement. Without limiting the generality of the preceding sentence, The Ambulance shall: (i) provide all information necessary for EMR to prepare and execute any documents required to be prepared or executed by it in order for it to perform its duties pursuant to this Agreement; (ii) execute any such documents described in preceding clause (i), if required; (iii) comply with EMR's reasonable requests in connection with preparing, submitting, and processing claims for reimbursements from Medicare, Medicaid, and other third-party payers; and (iv) obtain patient consents to release to EMR any medical information that is otherwise confidential and is necessary in order for EMR to perform the Services hereunder.

(c) Reasonable Billing Practices. The Ambulance shall engage in reasonable billing practices and only bill those services that are lawful and within the generally accepted practices of other ambulance services in the locale or jurisdiction of the Ambulance. In the event EMR is unable to process or collect amounts billed by The Ambulance due to the Ambulance's failure to adhere to these reasonable billing practices, EMR shall not be responsible for reimbursing or compensating The Ambulance in any way for the amounts associated therewith.

(c) Fees/Charges/Waivers. The Ambulance shall provide EMR with a full schedule of its fees and charges for its ambulance service and any corrections, changes, or updates thereto. All decisions on reducing or waiving any charges in specific cases shall be made pursuant to The Ambulance's written direction.

7. EVENTS EXCUSING THE PARTIES FROM PERFORMANCE.

(a) Force Majeure. EMR and The Ambulance shall not be liable to the other for their failure to perform any of the services required herein in the event of strikes, lock-outs, calamities, acts of God, unavailability of labor or supplies, or other events over which the party failing to perform has no control for so long as such events continue, and for a reasonable period of time thereafter to allow the non-performing party to reestablish such services.

(b) No Warranty of Technology / Liquidated Damages. EMR does not warrant that the software or access to the EMR servers will be error free or uninterrupted. EMR will, as its own expense and as its sole obligation use commercially reasonable efforts to correct any reproducible errors in the software or EMR servers reported to EMR by The Ambulance in writing. The Ambulance's sole and exclusive remedy for any breach of this provision shall be that EMR shall pay The Ambulance the sum of One Thousand Dollars (\$1,000.00). Said sum shall not be regarded as a penalty but rather is established because the remedy at law would likely be inadequate, and the actual resultant damage difficult of precise determination.

8. SERVICE FEES.

(a) Service Fees. In full payment for ordinary services performed by EMR under this agreement, EMR will be paid a commission of Six and one half percent (6.5%) of all monies collected from payers other than NYS Medicaid that is related to all

patients. For claims paid by NYS Medicaid, EMR will charge fifteen dollars (\$20) for claims paid as Primary, and eight dollars (\$12) for claims paid as secondary. EMR will submit a monthly invoice to The Ambulance that details the Service Fee due.

(b) Confidentiality. The Ambulance agrees to refrain from discussing with other individuals or entities any EMR fee schedules unless it is agreed to and authorized by an authorized officer, member, or manager of EMR.

(c) Due Date. The Ambulance will issue payment to EMR for the applicable commission within fifteen (30) days after receipt of each invoice. EMR reserves the right to charge interest of One and a half percent (1.5 %) per month on balances over fifteen (30) days.

(d) Collection Remedies. Should EMR, at any time, not be paid in accordance with this Agreement; EMR will attempt to collect from The Ambulance in either or both of the following ways:

(i) *Cessation of Services*. EMR will cease to provide its services after providing The Ambulance with no less than thirty (30) days written notice of EMR intent to cease services. The Ambulance will have ten (10) days from the date of receipt of said notice to make full payment and rectify the balance due. In the event payment is made, EMR will immediately resume providing its services in compliance with this Agreement.

(ii) *Termination of this Agreement*. The Ambulance hereby gives EMR the right to terminate this Agreement for nonpayment of services. In such event, EMR shall provide the Ambulance with no less than thirty (30) days written notice of EMR intent to terminate this Agreement, specifying the date upon which this Agreement shall be deemed terminated. In the event EMR proceeds with termination, EMR shall not be held liable for noncompliance with this Agreement. Notwithstanding, upon payment, all records will be returned to The Ambulance, general releases exchanged, and both Parties will have no further obligation to each other.

9. TERM OF THIS AGREEMENT.

(a) The Term. The term of this Agreement shall commence on execution by both Parties and shall continue in effect for thirty-six (36) months or until terminated for Cause by either The Ambulance or EMR.

(b) Automatic Renewal. To assure continuity of billing operations, the importance and desirability of such being recognized by both of the Parties, upon the expiration of the thirty-six (36) month term of this Agreement, this Agreement shall be automatically renewed for subsequent twelve (12) month terms, unless written notification of one of the Parties' intent not to renew is given by the received by the other party at least ninety (90) days prior to the first day of the renewal term.

(c) Termination.

(i) *Termination for Cause*

(1) **Cause Defined.** The term "Cause" as used herein shall be defined to include, but not be limited to a substantial breach of any of the terms of this Agreement; gross or willful negligence, and improper or illegal billing/collection practices. EMR shall be able to treat this agreement terminated for cause where there is a reduction of standard service fees charged by The Ambulance of more than Ten percent (10%) from the rates in effect on the effective date of this agreement.

(2) **Notice.** In the event that either party elects terminate this Agreement for Cause, the terminating party shall deliver written notice to the other, by certified mail, return receipt requested, providing not less than thirty (30) days notice of said election, and setting forth the effective date of the termination, as well as the Cause that terminating party has declared.

(ii) *Termination on Account of Bankruptcy.* In the event of the filing of a voluntary petition for bankruptcy or an assignment for the benefit of creditors by EMR or The Ambulance, or upon other action taken or suffered, voluntarily or involuntarily, under any federal or state law for the benefit of debtors of or by EMR or by The Ambulance, except for the filing of an involuntary petition for bankruptcy against EMR or The Ambulance which is dismissed within sixty (60) days thereafter, the non-filing party may give notice of the immediate termination of this Agreement.

(iii) *Penalty for Terminating Without Cause.* In the event that The Ambulance terminates this Agreement without Cause, The Ambulance shall be required to reimburse EMR the full cost associated with procurement, assembly, delivery and training of all equipment, including but not limited to all hardware, including iPads and other tablets and devices, all software, including licenses, as well as any training guides or materials.

(d) Survival of Obligations. Obligations set forth in this Agreement that expressly extend beyond the term, including without limitation Indemnification under paragraph 11., shall survive the expiration and termination of this Agreement.

(e) EMR's Obligation to Surrender Records. Upon the expiration or termination of this agreement for any reason, whether for cause or otherwise, EMR shall surrender to The Ambulance all books and records pertaining to The Ambulance; provided that EMR may retain copies of such documents to the extent reasonably necessary for EMR to complete its post termination obligations and activities under this agreement.

(d) The Ambulance's Obligation to Surrender Equipment. Upon the expiration or termination of this agreement for any reason, whether for cause or otherwise, The

Ambulance shall surrender to EMR all equipment provided to The Ambulance by EMR under this Agreement, including but not limited to all hardware, including iPads and other tablets and devices, all software, including licenses, as well as any training guides or materials.

10. RELATIONSHIP OF THE PARTIES. Notwithstanding any other provision herein to the contrary or otherwise,

(a) Independent Contractors. EMR shall be an independent contractor and not an employee, partner, or joint venture of or with The Ambulance; The Ambulance shall be an independent contractor and not an employee, partner, or joint venture of or with EMR.

(b) Business Associates Agreement. EMR shall act on behalf of The Ambulance in accordance with and under the terms of the Business Associates Agreement ("BAA"), which is attached to this Agreement, marked as Appendix "A" and incorporated herein by reference. The Ambulance further authorizes EMR to hire independent Contractors to assist EMR in carrying out the Services and its obligations under this Agreement, and in doing so is duly authorized by The Ambulance to enter into a BAA with said Independent Contractor on behalf of The Ambulance.

(c) Authority to Bind. Unless otherwise specifically provided in this Agreement, EMR shall not have the ability or authority to bind or contract for The Ambulance, to transact business in the name of or on behalf of The Ambulance, other than the services provided for in this agreement, or to make representations or incur any indebtedness, liability or obligation in the name or on behalf of The Ambulance;

11. INDEMNIFICATION. Each of the Parties each hereby agrees to indemnify, defend, and hold the other party and its members, shareholders, directors, officers, employees, and business associates harmless from any and all legal action, suits, loss, liability, judgment, damages, and expense, which shall include costs and reasonable attorneys' fees, it suffers or incurs as a result of the performance or breach of any of the terms of this Agreement except to the extent, in whole or part, such legal action, loss, liability, judgment or expense was caused by the negligent or other wrongful acts or omissions of the other party.

12. CONFIDENTIALITY. The Parties acknowledge that in the course of performing Services under this Agreement, EMR will have access to confidential patient information, including protected health information ("PHI"), as defined in the Health Insurance Portability and Accessibility Act of 1996 ("HIPAA") and regulations promulgated thereunder. EMR shall comply with all applicable HIPAA privacy and security rules. EMR shall not use or disclose PHI, except in the course of providing Services under this Agreement or as required by law. To the extent required by HIPAA, the Parties shall be bound by the terms of the HIPAA Business Associate Agreement which is attached to this Agreement, marked as Appendix "A" and incorporated herein by reference.

13. USE OF PRACTICE STATISTICS. Notwithstanding paragraph 12, above, but subject to the restrictions of this section and applicable law (including without limitation federal and state law and regulations relating to confidentiality), EMR may disclose information and

clinical data collected while performing services under this Agreement, in connection with any survey, presentation, published material, study, or research project which EMR deems appropriate. In no event will any such data disclose or divulge the identity of any patient or, to the extent reasonably practicable, any employee of The Ambulance.

14. DISPUTE RESOLUTION. Due to the nature of the Services to be performed hereunder, the unique characteristics of The Ambulance, and the need for flexibility in performance of the Services, the Parties desire a means of resolving disputes, conflicts, or issues arising hereunder. Accordingly, the following procedure is hereby defined as the procedure for Dispute Resolution. The Parties agree to a stepped-up conflict resolution process, whereby all disputes shall first be attempted to be negotiated and if no resolution reached, the Parties shall then enter into non-binding mediation. If no agreement is thereby reached, the Parties shall then be free to submit to litigation. If a resolution is reached at any one of the foregoing stages, same shall result in the issuance of a written Resolution Agreement, which Resolution Agreement may or may not be an amendment to this Agreement, depending upon the issue(s) resolved. The specific stages in reaching a resolution are further elaborated as follows:

(a) Negotiation. Although this Agreement provides for Mediation at subsection (b), it is the intention of the Parties to provide an informal, pre-Mediation mechanism for the resolution of all service issues, and/or similar or other disputes or circumstances arising from or in relation to this Agreement. In such event, any party hereunder may give written notice to the other of its dispute or circumstance and its desire to meet to discuss same. One representative designated by each party shall meet within ten (10) days following the date of such notice to attempt to resolve the issue in question. The meeting may be held telephonically. If the issue is not resolved successfully (by agreement of the parties) within ten (10) days following such meeting, either party may then initiate Mediation proceedings in accordance with the procedures set forth in subsection (b) below.

(b) Mediation. Any service issue, and/or similar or other dispute or circumstance from or in relation to this Agreement that has not been resolved pursuant to the informal Negotiation mechanism set forth at subsection (a) above, shall be Mediated before proceeding to litigation. Mediation may be requested by written notice from any party hereto and must be held within thirty (30) days following such notice. The Parties shall mutually agree upon a Mediator. If they cannot so agree thereupon within five (5) days following the request for Mediation, the Parties shall refer the dispute to the National Health Lawyers Association Alternative Dispute Resolution Service ("NHLADS") for appointment of a Mediator; or, in the event that this service is not available, the dispute shall be referred to a comparable alternative dispute resolution service. Mediation shall commence within twenty-five (25) days following the selection of the Mediator and shall take place in Albany, New York. Any information or disclosures revealed by any party pursuant to the Mediation process shall be confidential and may not be referred to in any subsequent proceeding.

(c) Litigation. Any service issue, or other or similar circumstance or issue arising under this Agreement that has not been resolved pursuant to the Negotiation or Mediation mechanisms set forth at subsections (a) and (b) hereinabove shall be resolved pursuant to litigation as the Parties so desire.

(d) Memorializing the Resolution. The Resolution Agreement or resolution from a Negotiation shall be jointly written and issued by the Parties to such Negotiation. The Determination decision from Arbitration shall be written by the respective Mediator or Arbitrator.

15. RESTRICTIVE COVENANTS.

(a) Mutual Covenants. The Parties each further covenant that during the term of this Agreement, and for a period of one (1) year thereafter, neither party hereto nor any members, shareholders, directors, officers, employees, and business associates shall, either directly or indirectly, for itself, or through, on behalf of, or in cooperation with any person, persons, partnership or corporation, materially divert or attempt to divert any actual, prospective, or potential principal, employee, patient, or client of the other to itself or to any competitor by direct inducement or otherwise, or to do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the others respective business(es).

(b) Enforcement. If any provision hereof relating to a restrictive period, scope of activity restricted and/or the territory described therein shall be declared by a court of competent jurisdiction to exceed the maximum time period, scope of activity restricted or geographical area such court deems reasonable and enforceable under applicable law, then the time period, scope of activity restricted and/or area of restriction held reasonable and enforceable by the court shall thereafter be the restrictive period, scope of activity restricted and/or the territory applicable to the restrictive covenant provisions hereof. The invalidity or non-enforceability hereof in any respect shall not affect the validity or enforceability of the modified restrictive period, the remainder of this or of any other provision of this Agreement.

17. NOTICES. Each notice to be given to either party pursuant to this Agreement shall be in writing and be deemed to have been properly given if hand delivered or if mailed by certified mail, return receipt requested, to the other party at the address for that party as set forth below:

EMERGENCY MANAGEMENT RESOURCES LLC
PO Box 787
Latham NY 12110
Legal Notice Enclosed

Montgomery County
64 Broadway
Fonda, NY 12068-1500

Each of the Parties may from time to time designate by written notice under this Paragraph to the other party any other address, person, or entity to which or to whom notice, or copies thereof shall be sent.

18. ASSIGNMENT. Neither party may sell, transfer, assign, delegate or subcontract any

rights or obligations under the Agreement without the prior written consent of the other party.

19. **GOVERNING LAW.** This Agreement shall be governed by and interpreted and construed in accordance with the laws of the State of New York and litigation hereunder shall take place in the Federal or State Courts located within Albany County and the Parties agree to the jurisdiction of these Courts, both substantive and personal.

20. **CHANGE IN THE LAW.** The Parties recognize that this Agreement is at all times subject to applicable state, local, and federal laws. The Parties further recognize that this Agreement may become subject to amendments in such laws and regulations and to new legislation. Any provisions of law that invalidate, or are otherwise inconsistent with, the material terms and conditions of this Agreement, or that would cause one or both of the Parties hereto to be in violation of law, shall be deemed to have superseded the terms of this Agreement and, in such event, the Parties agree to utilize their best efforts to modify the terms and conditions of this Agreement to be consistent with the requirements of such law(s) in order to effectuate the purposes and intent of this Agreement. In the event a mutually agreeable modification of this Agreement is not reached and set forth in an executed written agreement within thirty (30) days of receipt of written notice from one party to the other party setting forth the proposed changes and the rationale for same, then either party may, by giving the other an additional sixty (60) days written notice, terminate this Agreement, unless this Agreement would terminate earlier by its terms.

21. **BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of EMR and The Ambulance, and each of their respective successors and assigns.

22. **ENTIRETY.** This Agreement constitutes the entire Agreement between the Parties with respect to the matters dealt with in this Agreement, and supersedes all oral and written proposals, representations, understandings, and agreements previously made or existing with respect to any such matters.

23. **MODIFICATION / WAIVER.** This Agreement may not be modified or waived in part or whole, whether by any course of dealing, acquiescence or otherwise, except in a writing signed by the party against whom enforcement is sought.

24. **LIQUIDATED DAMAGES.** EMR shall pay to The Ambulance the sum of One Thousand Dollars (\$1,000.00) in the event of breach of this agreement. Said sum shall not be regarded as a penalty but rather is established because the remedy at law would likely be inadequate, and the actual resultant damage difficult of precise determination.

25. **SEVERABILITY.** The holding of any provision of this Agreement to be invalid or unenforceable by a court of competent jurisdiction shall not affect any other provision of this Agreement, which shall remain in full force and effect.

26. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the effective date above written.

Montgomery County

By: _____

Date: _____

Address:

64 Broadway

Fonda, NY 12068-1500

Emergency Management Resources, LLC

By: _____

Member

Date: _____

Address:

PO Box 787

Latham, New York 12110

Appendix A – Business Associates Agreement