

EQUIPMENT PURCHASE AND SERVICES AGREEMENT

This Equipment Lease and Services Agreement (the “**Agreement**”) by and between Ulysses USD 214, a Kansas school district (“**UUSD**”) and EMD ANYWHERE, LLC, a Tennessee Limited Liability Company (“**eMD**”) shall be effective as of August 1, 2019 (the “**Effective Date**”).

RECITALS

WHEREAS, UUSD is a party to certain Telehealth Services Agreements by and between UUSD and certain public school districts in the State of Kansas (the “**Telehealth Services Agreements**”) pursuant to which UUSD agrees to provide Telehealth Services (as defined in the applicable Telehealth Services Agreements) and is permitted to bill Patients and their responsible payors for such Telehealth Services;

WHEREAS, eMD is in the business of providing equipment, software, and related services, to facilitate the provision of professional telehealth and related services to patients;

WHEREAS, UUSD desires to enter into this Agreement to obtain the equipment, software, and related services described in this Agreement from eMD and eMD desires to provide such items and services to UUSD according to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

Section 1. DEFINITIONS

Capitalized terms not otherwise defined in this Agreement shall have the meanings assigned to such terms in this Section.

1.1 “Authorized Users” shall mean UUSD personnel, Clinicians, and Identified School personnel who are authorized by UUSD to use the Telehealth Platform.

1.2 “Clinicians” shall mean appropriately licensed physicians and nurse practitioners who are engaged by UUSD to provide Telehealth Services to Patients under a Telehealth Services Agreement.

1.3 “eMD Personnel” shall mean individuals who are employed, contracted or otherwise engaged by eMD to furnish services to UUSD pursuant to this Agreement.

1.4 “Telehealth Services” shall mean telehealth consultations furnished by UUSD Clinicians to Students at Identified Schools pursuant to a Telehealth Services Agreement.

1.5 “Identified School” shall mean the schools identified in a Telehealth Services Agreement at which UUSD Clinicians shall provide Telehealth Services to Patients by utilizing the Telehealth Platform.

1.6 “Patients” shall mean those individuals who are eligible to receive Telehealth Services from UUSD Clinicians pursuant to a Telehealth Services Agreement.

Section 2. OBLIGATIONS OF EMD

2.1 Telehealth Platform

(a) **Telehealth Platform.** eMD shall sell to UUSD, and UUSD shall buy from eMD, certain equipment, software and supplies that together constitute a Telehealth Platform, a technical description of which is attached hereto as Exhibit A (the “**Telehealth Platform**”). The Telehealth Platform shall conform to its detailed specifications, which are attached as part of Exhibit A and incorporated herein, and shall be appropriate for use in provision of the Telehealth Services. For the avoidance of doubt, the lease hereunder includes a license for UUSD and its Authorized Users to use any and all software components provided as part of the Telehealth Platform for the purposes contemplated herein.

(b) **Scheduling and Availability.** eMD shall sell to UUSD one (1) Telehealth Platform for each Identified School listed at Exhibit B. New Identified Schools may be added to Exhibit B upon mutual written agreement by the Parties. In the event an agreement for Telehealth Services is terminated between UUSD and an Identified School, UUSD may remove the Identified School from Exhibit B upon giving 30 days’ prior written notice to eMD.

(c) **Lawful Use.** UUSD shall have exclusive use of the Telehealth Platform as described herein for all lawful purposes related to performance of Telehealth Services. Neither UUSD nor eMD will relocate the Telehealth Platform without the prior written consent of the other party. UUSD will only permit Authorized Users to use the Telehealth Platform during the term of this Agreement, and UUSD will not permit any other physician, medical group or other party to use the Telehealth Platform without eMD’s prior written consent.

(d) **Maintenance, Replacement and Repair.** eMD shall be responsible for: (i) maintaining the Telehealth Platform in good condition and proper working order; and (ii) performing or causing to be performed all routine maintenance, replacements and repairs with respect to the Telehealth Platform, in accordance with this Agreement and warranties.. UUSD will require that each Identified School provide reasonable access to the Telehealth Platform so that eMD or its contractors can repair and maintain the Telehealth Platform. In the event of damage to any part of the Telehealth Platform (an “**Event of Damage**”), UUSD shall promptly notify eMD of the occurrence of such Event of Damage, and eMD shall fully repair or replace the damaged component of the Telehealth Platform or replace the Telehealth Platform in its entirety as soon as is reasonably practicable, but not later than five (5) business days from the date of an on-site inspection of the damaged equipment by eMD personnel. Any replacement component or Telehealth Platform provided hereunder shall be equivalent to the original Telehealth Platform originally provided hereunder. Cost of replacement parts outside of warranty will be the responsibility of UUSD.

(e) **Telehealth Platform Identification.** eMD shall, at its own expense, firmly affix to the back of the equipment comprising the Telehealth Platform, in a conspicuous manner, such decal showing eMD as the manager of the Telehealth Platform, or such other mode of identification at eMD's sole discretion

(f) **Third Party Components.** To the extent the Telehealth Platform includes any third party components, eMD will (i) identify such third party components in writing; (ii) ensure that UUSD shall receive the benefit of all third party warranties and other protections applicable to the components; and (iii) disclose to UUSD in writing any third party terms and conditions applicable to such components.

(g) **Disclaimers.** UUSD acknowledges that eMD is not the manufacturer of the Equipment, nor manufacturer's agent, and that eMD makes NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, DESIGN OR CONDITION, THE MERCHANTABILITY OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, the quality or capacity of the materials in the Equipment, or that the Equipment will satisfy the requirements of any law, rule, specification or contract which provides for specific machinery or methods. No defect or unfitness of the Equipment shall relieve UUSD of any obligation to eMD hereunder. No agreement, guaranty, promise, representation or warranty or any modification hereof shall be binding on eMD unless made in writing.

2.2 eMD Support Services and Requirements

(a) **Support Services.** eMD shall provide to UUSD and Authorized Users the training, installation, configuration, troubleshooting, and other support services set forth in this Agreement, the Protocol for Services attached hereto as Exhibit C, and as otherwise agreed upon by the parties in writing (collectively, the "**Support Services**").

(b) **Training.** eMD shall provide reasonable training services to designated individuals with UUSD and at the Identified Schools on the operation and use of the Telehealth Platform. Such training services will include in-person training for such individuals identified by UUSD, and training will take place on-site at the Identified Schools at times mutually agreed upon by the parties. Training will include, at a minimum, the following: (i) visiting the school location to determine location of the Telehealth Platform; (ii) meeting with the medical provider(s) (e.g. medical doctor or registered nurse) for instruction of the Telehealth Platform and explanation of their role in the telemedicine program; (iii) meeting with the on-site telemedicine technician(s) for training on the use of the Telehealth Platform and related software; and (iv) conducting live telemedicine testing at the school location.

(c) **Installation and Configuration Support.** eMD shall provide a liaison that will coordinate and supervise the installation of the Telehealth Platform at each Identified School. eMD personnel will install and configure for use in accordance with this Agreement one (1) Telehealth Platform at each Identified School within thirty (30) days, but not later than ten (10) business days prior to the first day of school at each Identified School. eMD shall be solely responsible for any damage caused by it or its personnel in the course of performing delivery, installation, or other services or activities hereunder.

(d) **Acceptance Testing.** Upon completion of installation and configuration, eMD will confirm each Telehealth Platform is fully set up and operational for use by UUSD and its Authorized Users. Following such confirmation, UUSD may review, test, and evaluate the Telehealth Platform in production for a period of five (5) business days (the “**Test Period**”) to confirm the Telehealth Platform functions and performs in accordance with its specifications. If, during the Test Period, UUSD determines the Telehealth Platform is not functioning and performing in accordance with its specifications, eMD shall immediately, and in any event within two (2) business days, repair, fix, replace or otherwise correct the non-performing Telehealth Platform, and the Test Period will recommence in its entirety. In the event all Telehealth Platforms provided hereunder are not “accepted” within three (3) Test Periods, UUSD may in its sole discretion: (i) elect to extend the time for correction of the error(s); (ii) accept the Telehealth Platform subject to an equitable adjustment in fees and/or other modification to address the error; or (iii) terminate this Agreement immediately upon written notice, receive a refund of any prepaid amounts hereunder, and not be responsible for any further payments to eMD hereunder.

(e) **Background Checks and School Requirements.** eMD shall perform background checks on all eMD Personnel who will be in proximity to Patients under this Agreement, as required by T.C.A. 49-5-413. eMD shall provide reports of any such background checks to UUSD before eMD Personnel provides services under the Agreement. eMD will further comply with all requirements of the Identified Schools applicable to UUSD to the extent such requirements apply to services subcontracted to eMD hereunder (e.g., any additional requirements applicable to on-site service providers at the Identified Schools).

(f) **Obligations with respect to eMD Personnel.** eMD shall be solely responsible for paying eMD Personnel’s salaries and providing eMD Personnel’s fringe benefits, and for providing all required workers’ compensation insurance coverage, and for withholding, as required by law, any sums of income tax, unemployment insurance, social security, or any other withholding pursuant to any applicable law or governmental requirement for eMD Personnel. eMD shall assume full responsibility for the conduct of the eMD Personnel and shall be responsible for appropriately supervising any eMD Personnel performing services under this Agreement.

(g) **Interface.** eMD shall provide commercially reasonable cooperation and efforts to develop an interface between the eMD platform and UUSD information systems. Such interface is not currently available, but is expected to be developed during the Initial Term of the Agreement.

Section 3. UUSD OBLIGATIONS

3.1 Telecommunications Requirements. UUSD shall require that the minimum telecommunications requirements set forth at Exhibit D are available at each Identified School.

3.2 Consideration. In consideration of eMD’s selling of equipment and provision of services described in Section 2, UUSD shall pay eMD as set forth in Exhibit E.

3.3 Billing for Telehealth Services. UUSD shall have the right to bill Patients and their responsible payors for Telehealth Services utilizing the Telehealth Platform. eMD

acknowledges and agrees that it shall not bill any Patients or payors for services in connection with this Agreement.

3.4 Right of First Refusal.

(a) During the Term of this Agreement, if UUSD desires to enter into a Telehealth Services Agreement with any school district located within additional counties identified at a later date, that is not excluded pursuant to Section 3.4(c) of this Agreement (a “New District”), eMD shall be provided with written notice of UUSD’s intention to enter into a Telehealth Services Agreement for the provision of Telehealth Services, with the New District, and given thirty (30) days from the date of the notice to respond. eMD shall have the right, but not the obligation, to add the New District, and its individual schools, to the Identified Schools listed in Exhibit B. eMD’s failure to respond by the deadline shall serve as explicit permission and approval for UUSD to obtain a third party telemedicine equipment provider for the New District.

(b) During the Term of this Agreement, if eMD desires to supply telemedicine equipment and/or services to any New District, UUSD shall be provided with written notice of the New District and given thirty (30) days from the notice to respond. UUSD shall have the right, but not the obligation, to enter into a Telehealth Services Agreement with the New District, as the provider of telemedicine services to the schools located within the New District, and add the schools to the Identified Schools listed in Exhibit B. UUSD’s failure to respond by the deadline shall serve as explicit permission and approval for eMD to obtain a third party medical provider to enter into a Telehealth Services Agreement with the New District.

(c) During the Term of the Agreement, eMD shall not contract with another healthcare provider to furnish telemedicine equipment of substantially similar nature or type for the purpose of facilitating the provision of telemedicine services in any schools located in the counties identified on Exhibit F.

3.5 Limited Non-Competition. For a period of thirty-six (36) months from the Termination end date of this or any subsequent agreement, UUSD shall not, directly or indirectly, engage or invest in, own, manage, operate, finance, control, or participate in the ownership, management, operation, financing, or control of, be employed by, associated with, or in any manner connected with, lend his/her name or any similar name to, lend his/her credit to, or render services or advice to, any business engaged, in whole or in part, in the provision of school-based telemedicine at any Identified School on Exhibit B..

Section 4. CONFIDENTIALITY AND PATIENT RECORDS

4.1 Proprietary Information Confidentiality. The Parties acknowledge that pursuant to this Agreement, certain information disclosed by and among the Parties is of a special and unique character and constitutes confidential information (“**Confidential Information**”). For the avoidance of doubt, UUSD’s Confidential Information shall include information about its Authorized Users and Patients and eMD’s Confidential Information shall include information about its trade secrets, technical information, know-how, plans, specifications, identity of UUSDs, and identity of suppliers. Each Party shall exercise care and protection with respect to the other Party’s Confidential Information, shall use and disclose the other Party’s Confidential Information

solely to perform its obligations and exercise its rights under this Agreement, and shall not directly or indirectly disclose, copy, distribute, republish or otherwise allow any third party to have access to any Confidential Information. Notwithstanding the foregoing limitations, eMD acknowledges that UUSD may disclose certain Confidential Information of eMD to the Identified Schools for the purposes set forth in this Agreement, provided that UUSD requires the Identified Schools to comply with confidentiality obligations substantially similar to those set forth herein with respect to eMD's Confidential Information. Each Party may disclose the other Party's Confidential Information if so required by law (including court order or subpoena), provided that such Party may require the disclosing Party to request the appropriate court or governmental body to seal the record that shall contain such Confidential Information.

4.2 Return or Destruction of Confidential Information. Upon the termination of this Agreement, each Party shall promptly cease any use and destroy (and certify to the other Party as to such destruction) or deliver to the other Party all of the other Party's Confidential Information in the Party's possession or control, in any form, including all drawings, manuals, letters, notes, notebooks, reports and copies thereof and all other materials, including computer codes, programs, other software and electronically-stored data, and without limitation, those of a secret or confidential nature or relating to other Party's business.

4.3 Patient Records Confidentiality. eMD and UUSD shall comply with all applicable state and federal laws and regulations protecting the confidentiality of patient records, including the Health Insurance Portability and Accountability Act of 1996, corresponding Standards for Privacy of Individually Identifiable Health Information regulations, and the Security Standards for Protection of Electronic Protected Health Information, each as amended from time to time. In providing the Telehealth Platform and personnel services hereunder, eMD acknowledges that it serves as a business associate of UUSD. The Parties agree to execute and comply with the Business Associate Agreement, attached hereto as Exhibit G.

4.4 Injunctive Relief. The Parties acknowledge that monetary damages may be inadequate to compensate for a breach of the provisions contained in this Section or other confidentiality provisions of this Agreement. In the event of a breach, the non-breaching Party shall be entitled to injunctive relief and any and all other remedies available at law or in equity. This Section in no way limits the liability or damages that may be assessed against a breaching Party in the event of a breach of any of the provisions of this Section.

4.5 Survival. The terms of this Section shall survive the termination of this Agreement.

Section 5. TERM AND TERMINATION

5.1 Term. The Agreement will become effective as of the Effective Date and shall continue for a period of one (1) year from the Effective Date (the "**Initial Term**") unless otherwise terminated pursuant to this Section. Upon expiration of the Initial Term, the Agreement will automatically renew at the end of the then-current term for successive additional terms of one (1) year (each a "**Renewal Term**") unless either party provides notice of non-renewal to the other

party at least one hundred twenty (120) days prior to the end of the then-current term. The Initial Term and each Renewal Term will be deemed the “**Term**.”

5.2 Termination. In addition to any other express termination right set forth elsewhere in this Agreement:

(a) Either party (the “**Terminating Party**”) may terminate this Agreement if the other party (the “**Breaching Party**”) materially breaches this Agreement or materially defaults in the performance of the Breaching Party’s obligations under this Agreement, and the Breaching Party fails to cure such material breach or default within thirty (30) days after the date on which the Terminating Party gives the Breaching Party written notice specifying in reasonable detail the nature, facts and extent of such breach or default.

(b) Either Party may terminate this Agreement immediately upon notice to the other Party in the event that the other Party violates Section 4 above (Confidentiality).

5.3 Effect of Termination. In the event of termination, UUSD will cease using the Telehealth Platforms. UUSD will cooperate with eMD to allow eMD reasonable access to the Identified Schools, and eMD will promptly remove, at eMD’s sole expense, the Telehealth Platforms at a time mutually agreed upon by the parties. The provisions of this Agreement that by their terms are designed to survive termination shall survive any such termination.

Section 6. INDEMNIFICATION AND LIABILITY

6.1 Indemnification

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto in Exhibit H , are hereby incorporated in this contract and made a part thereof.

Section 7. GENERAL PROVISIONS

7.1 Representations and Warranties. Each Party represents and warrants to the other Party as follows: (a) it is duly organized, validly existing and in good standing under the laws of the state of Tennessee; (b) it has the requisite power and authority to execute, deliver and carry out this Agreement; (c) it holds all material licenses, permits, registrations and approvals it is required by law or regulation to hold in its name to conduct and operate its facilities, businesses and services as presently conducted and operated; (d) it holds all material accreditations it is required by law or regulation or is expected by practice and/or industry standard to hold in its name; and (e) neither it nor its employees are excluded from participation from federal programs, including but not limited to Medicare and Medicaid.

7.2 Insurance. Each Party shall obtain and maintain during the term of this Agreement, at its own expense, (i) workers' compensation insurance coverage for its respective employees pursuant to state requirements; (ii) commercial general liability covering its employees, contractors and agents with respect to the services with minimum amounts of liability of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate; and (iii) in the case of eMD, cyber-liability coverage in the amount of at least two million dollars (\$2,000,000) per occurrence and annual aggregate, and any additional insurance necessary to cover its obligations hereunder. UUSD shall not be required to insure the Telehealth Platform from the risk of loss or damage. Each Party may satisfy the requirements of this section through a program of self-insurance, and shall obtain and deliver to the other Party, at its request, a certificate evidencing such insurance coverage.

7.3 Force Majeure. In no event will a Party be liable or responsible to the other or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by any circumstances beyond a Party's reasonable control (a "**Force Majeure Event**"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. In the event of any failure or delay caused by a Force Majeure Event, the party impacted shall give prompt written notice to the other stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

7.4 No Third-party Beneficiaries. Except as expressly provided in this Agreement, this Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

7.5 Independent Contractor. In the performance of their respective duties and obligations pursuant to this Agreement, the Parties agree and expressly acknowledge that they are "independent contractors," and nothing in this Agreement is intended and nothing shall be construed or deemed to create a relationship of employment, partnership or joint venture between them. Each Party's subcontractors, agents and employees are at all times acting as independent contractors with respect to the other Party and not as the other Party's agents or employees. Each Party understands and agrees that: (a) the other shall not be treated as an employee for federal tax purposes, (b) neither shall withhold on behalf of the other any sums for income tax, unemployment insurance, social security, or any other withholding pursuant to any law or requirement of any governmental body or make available any of the benefits afforded to its employees, and (c) all such payments, withholdings and benefits, if any, are the sole responsibility of the Party incurring the liability.

7.6 Governmental Investigations. Each Party will provide prompt written notice to the other Party upon becoming aware of, and will reasonably cooperate with the other Party in connection with, any governmental investigation or other action by a governmental or certification entity related to the Telehealth Services. This cooperation will include, without limitation, allowing a Party access to all requested records, documents and data in the other Party's possession or control.

7.7 Binding Nature of Agreement; Assignment. Except as otherwise provided herein, all the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Notwithstanding, the Parties expressly acknowledge that any assignment to entities controlled by, controlling, or under one hundred percent (100%) common ownership with an assigning Party or originating out of any merger, consolidation or reorganization of an assigning Party shall not require the consent of the non-assigning Party. Except as expressly set forth herein, neither Party may otherwise assign or transfer this Agreement, or any of its rights or obligations under or interest in this Agreement, without the prior written consent of the other Party which consent shall not be unreasonably withheld.

7.8 Governing Law; Venue. This Agreement shall be governed by and shall be construed, interpreted, and enforced in accordance with the laws of the State of Kansas. The Parties hereby submit to the exclusive jurisdiction of the courts located in Ulysses County, Kansas for any dispute arising under or in connection with the Agreement or related to any matter which is the subject of the Agreement.

7.9 Dispute Resolution. In the event of a dispute between the Parties hereunder, the Parties will promptly meet and work in good faith to resolve such dispute. In the event the Parties are unable to resolve any such dispute within thirty (30) days of initial written notice of the dispute, either party may submit the dispute for binding arbitration in Grant County, Kansas.

7.10 Notices. Any notice required hereunder shall be delivered by hand, by courier service, or by certified mail (return receipt requested, postage prepaid) to the address provided by the Party to be notified. Either Party may change the referenced addresses and contact information by written notice to the other in accordance with this Section. Notices shall be effective: (a) as of the date personally delivered if by hand, or (b) for notices sent by certified mail, five (5) business days after the postmark date, or (c) upon receipt if sent by courier service such as Federal Express, U.P.S., or DHL. Notices also may be delivered by electronic means (but must be confirmed in writing as above) and notices so delivered shall be effective upon actual receipt of the electronic transmission.

If to UUSD:

Ulysses USD 214
111 S.Baughman Ave
Ulysses, KS 67880

If to eMD:

eMD Anywhere, LLC

PO BOX 50728
Phoenix, AZ 85076-0728

7.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. The Parties agree that this Agreement may be executed by any party by electronic signature.

7.12 Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law. If any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or any other jurisdiction and such other provisions shall be valid and enforceable to the fullest extent permitted by law, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

7.13 Amendments. Any amendments to this Agreement or the Exhibits hereto shall be in writing and executed on behalf of each Party by any duly authorized officer thereof, and this Agreement and the Exhibits hereto may not be modified or terminated orally.

7.14 Waiver of Breach. Any waiver of any term and condition of this Agreement must be in writing and signed by the party against whom it is sought to be asserted. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to constitute, a waiver of any other provision hereof or of any subsequent or continuing breach of the same or another provision hereof. No failure, neglect or delay on the part of any party in exercising any right hereunder will be deemed a waiver thereof and shall not affect such party's right to enforce such right, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

7.15 Entire Agreement. This Agreement, the Exhibits and any agreements or documents referenced therein, shall be the entire understanding and agreement between eMD and UUSD with respect to the Telehealth Services that are the subject of this Agreement. This Agreement supersedes all other previous negotiations, commitments and writings between the Parties with respect to the Telehealth Services.

[Signatures Follow]

Agreement

EXECUTION PAGE

In consideration of mutual covenants and promises stated herein and other good and valuable consideration, the undersigned have agreed to be bound by the Agreement as of the Effective Date.

UUSD

By: _____

Name: Dave Younger _____

Title: Superintendent _____

EMD ANYWHERE, LLC

By: _____

Name: Scott Schumaker _____

Title: Managing Partner _____

Exhibit A
TELEHEALTH PLATFORM

EMD will provide UUSD with the hardware and software necessary for the operation of one (1) complete on-site telemedicine implementation (each a “**Telehealth Platform**”), including:

- Custom HP Computer:
 - Intel Core i3-6100 3.7G 3M 2133 2C CPU (65w processor)
 - Intel® 100 Series H110 Chipset
 - 4GB DDR4-2133 SODIMM (1x4GB) RAM
 - 500GB 7200 RPM SATA 2.5 HDD
 - Realtek RTL8151GH-CG GbE LOM
 - Intel 7265 802.11AC M.2 BT
 - Windows 10 Pro
 - HP Wireless Business Slim Keyboard and Mouse
 - Backup 1 MP Webcam with Dual Microphone Array
 - Adjustable Height Stand
 - High performance integrated stereo speakers
- HD Monitor;
- High Definition Video Camera:
 - CMOS Sensor Technology
 - 1920 x 1080 Sensor Resolution
 - Up to 30 Frames Per Second
 - 75° Diagonal Field of View
 - Auto Focus from 0.3 to 32.8'
 - 360° Rotation
 - Wide-Band Microphone
 - Wide-Angle Lens
- Oral Camera:
 - 1280 x 1024 Sensor Resolution
 - Scope of focus: 5mm ~ 50mm
 - Type of focus: Auto-focus of AF
 - Anti-fog, non-spherical lens
 - Magnetic PC holder
- All required Cables (power, data, video, etc.);
- Software for video teleconferencing/telemedicine (installed and configured on hardware provided);
- Stethoscope;
 - Digital Stethoscope
 - Variable Amplifies over 100X
 - Uses audio headphones
 - Lightweight
 - Precision Filtering
 - Rechargeable
 - 100 - 125 patient exams per charge
- Otoscope:
 - 1.3 Megapixel resolution

- Variable magnification up to 150x (digitally) and up to 50x (optically)
- Multi-layered glass lenses
- Up to 30 Frames Per Second

Cost per set: \$2400.00

Replacement parts will quoted as needed.

Exhibit B
IDENTIFIED SCHOOLS

EMD shall install the Equipment at the following school locations:

Kepley Middle School
Hickok Elementary School
Ulysses High School
Sullivan Elementary School

Exhibit C
PROTOCOL FOR SERVICES

This Schedule sets forth the interface between eMD and UUSD regarding the resolutions of problems with the eMD Telehealth Platform.

SUPPORT

eMD represents and warrants it shall provide support in a timely and professional manner in accordance with the level of care customarily observed by highly skilled professionals rendering similar services to UUSD and all end users of the Telehealth Platform authorized under this Agreement (“End Users”), including telephone, e-mail and web-based support, and on-site technical support if determined to be necessary by eMD, as defined in this Exhibit. A knowledgeable, appropriately qualified eMD support engineer will respond to UUSD’s request for problem resolution based on the case severity level, as described below:

Case Severity	Support
1	Within one (1) hour after logging the issue and calling the emergency hotline.
2	Within the next business day after logging the issue.
3	Within five (5) business days after logging the issue.

PROBLEM RESOLUTION

Resolution will consist of either a Work Around, an Interim Solution or a Permanent Solution, according to the schedule set forth below. Problems that require an Interim Solution will be considered resolved when the test used to reproduce the problem demonstrates the corrected behavior. Note: eMD is not responsible for resolving errors in equipment or software not provided by eMD or errors caused by individuals who are not eMD employees or contractors (except for errors arising from UUSD’s or any End User’s use of the Telehealth Platform for the purposes contemplated in this Agreement).

RESOLUTION OBJECTIVES

Case Severity	Work Around	Interim Solution	Permanent Solution
1	Provided within forty-eight (48) hours.	Provided within five (5) business days if no Work Around is possible.	Included in next release.

2	Provided within five (5) business days.	Provided within five (5) business days.	Included in next release.
3	Included in next release.	N/A	When deemed feasible by eMD.

SEVERITY DEFINITIONS

Severity Level	Description
1	A Severity 1 problem exists if any eMD Product or major function thereof is (i) inoperative; (ii) is experiencing terminable/intermittent problems that is having a significant impact on UUSD's ability to use the eMD Product.
2	A Severity 2 problem exists if functionality of the eMD Product is found to be defective or absent, or contains a problem that renders the eMD Product difficult, but not impossible to use.
3	A Severity 3 problem exists if the UUSD experiences a non-critical degradation of performance, or experiences minor problems that need correction in either eMD Product or the relevant eMD product manuals.

ESCALATION WITH eMD

Once UUSD or an End User notifies eMD Technical Product Support of the problem, eMD Technical Product Support will promptly notify the eMD support organization, which will promptly start verifying the problem. Once the problem is verified by the eMD support organization, the request will be handed over to product development if no resolution is immediately available.

The assigned support engineer follows up the issue internally within eMD and will, according to the resolution objectives set forth above, provide Work Around(s) and/or Interim or Permanent Solution(s) as appropriate to fully address the identified problem.

REMEDY

Within 30 days of the Effective Date, the parties will establish the maximum allowable downtime and appropriate credits for isolated, non-working equipment (e.g., a Telehealth Platform malfunction at one school.)

DEFINITIONS

“**Interim Solution**” means a short-term code-fix delivered as a hotfix or a patch from eMD to the UUSD.

“Permanent Solution” means an update of the eMD Product in which the problem has been resolved to conform to the eMD Product specification contained in the Documentation.

“Reproducible Test Case” means a test case that demonstrates in a small code sample, usually less than one hundred (100) lines, or in a detailed text format, the specific syntax or case that causes the problem. The test case must demonstrate the inconsistencies with the eMD Product Documentation.

“Work Around” means a temporary solution to a problem. A Work Around will be replaced with a Permanent Solution unless otherwise agreed to by the UUSD.

LEVEL 1 SUPPORT

The purpose of Level 1 Support is to assist Subscribers and End Users in the basic installation and usage of the Service. This includes answering general questions to help Subscribers and End Users understand what the Service is and how it provides a benefit to them. Level 1 Support is responsible for assisting Subscribers and End Users with the items listed below. This list may be refined as experience is gained and the Service evolves over time; provided, however, that Support may not be reduced during the Term of the Agreement.

1. Establishing an Internet launching a Web browser and surfing to various Web sites on the Internet.
2. Assisting in downloading the Service's End User software, running the Service's setup program, installing the Service software on the End User's PC and, if necessary, surfing to the Service's Web site.
3. Launching and running the Service, including answering basic questions about the system configuration needed for running the Service (i.e., Windows version, memory, hard disk space) as documented on the Service's Manuals.

Answering basic questions about navigating within the Service's End User interface.

4. Showing Subscribers and End Users how to know if the Service is working. This includes pointing out the Network View, Activity View and SpeedBar.
5. Confirming that the browser is actually forwarding its requests to the Data Center, by reviewing the Activity View and the browser's proxy settings.

6. Verifying that the Subscriber or End User has a Data Center connection online.
7. Assisting in uninstalling the Service.
8. Explaining the Service's Firewall and how to disable it if desired (including explaining the ramifications of disabling it). Assisting in opening additional ports in the Service's Firewall. The Subscriber or End User should be told that they should not run the Service's Firewall with any other firewall.
9. Assisting in adding sites into the Service's Site Blocking list and/or Ad Blocking list. Explaining how Ad Blocking removes ads and replaces them with "place holder" graphics, but that this can result in what appears to be "missing" elements on the page. Explaining how to turn off Ad Blocking if desired (including explaining that this will reduce the speed benefits of the Service).
10. Explaining how to change the image quality within the Service. This includes explaining how to refresh the page once quality has been set to "Best Quality." The Subscriber or End User should be informed of how to revert back to "Best Speed" image quality setting and that if they do not revert back to "Best Speed," the speed benefits of the Service will be reduced.
11. Explaining what a cache is, and how to adjust its settings within the Service.
12. Explaining what settings in the browser are changed when the Service is running (including proxy settings, the number of requests the browser will issue at one time and disablement of the browser's cache). The Subscriber or End User should be told that when the Service is not running, or is uninstalled, these settings in the browser are changed back to their original values.
13. Answering questions about obtaining (i.e., downloading) Service product updates and installing them.

Exhibit D
TELECOMMUNICATION REQUIREMENTS

BANDWIDTH REQUIREMENTS

- Video: 300 kbps per stream (recommended lowest level)
- Audio: 50 kbps per stream (recommended lowest level)

Note: We recommend that you have a minimum of 3Mbps down and 3Mbps up.

NETWORK CONNECTIVITY REQUIREMENTS

- Minimum Requirement: The minimum requirement is that TCP port 443 is open. Some firewall/proxy rules only allow for SSL traffic over port 443. You will need to make sure that non-web traffic can also pass over this port.
- Better Experience: In addition to the minimum requirements being met, we also recommend that UDP port 3478 is open.

Exhibit E
CONSIDERATION

UUSD shall pay to eMD a monthly fee in exchange for the Telehealth Platform and Services provided hereunder. For so long as the Agreement remains in effect, the monthly fee shall be as follows:

For each of the first ten (10) months (August through May) of the term, an amount equal to two hundred fifty dollars (\$250.00) per telehealth platform installed will be billed to UUSD and due payable by the 5th day of each calendar month.

The fee structure for this agreement is applicable to the four schools related in Exhibit B. Any subsequent schools or school districts added must be approved by EMD.

Equipment and supplies related in Schedule A: Two thousand four hundred dollars(\$2400.00) per installation. Payable upon receipt.

Exhibit G
BUSINESS ASSOCIATE AGREEMENT

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (this “**Agreement**”) is effective as of the 1st day of August, 2019, by and between UUSD 214 on behalf of itself and the members of the Affiliated Covered Entity described below (“**Covered Entity**”) and EMD ANYWHERE, LLC (“**Business Associate**”).

W I T N E S S E T H:

WHEREAS, Mountain States Health Alliance and its affiliates have designated as a single Affiliated Covered Entity under HIPAA and are therefore treated as a single covered entity for purposes of HIPAA and this Agreement;

WHEREAS, Covered Entity and Business Associate entered into an agreement, dated August, 2019, for the Business Associate’s provision of telemedicine equipment and software support services (the “**Services Agreement**”);

WHEREAS, the parties desire to comply with the HIPAA standards for the privacy and security of Protected Health Information and other applicable privacy and information security laws; and

WHEREAS, this Agreement sets forth the terms and conditions pursuant to which Protected Health Information that is provided by, or created or received by, Business Associate from or on behalf of Covered Entity will be handled.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements set forth below, the parties agree as follows:

1. **Definitions.**

- a. “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder, including those comprising 45 C.F.R. Parts 160 – 164, all as amended from time to time, including the HITECH Act.
- b. “HITECH Act” shall mean the Health Information Technology for Economic and Clinical Health Act and the regulations promulgated thereunder.
- c. “Individual” shall have the same meaning as defined in HIPAA and shall also include an Individual’s personal representative as the term is used at 45 C.F.R. § 164.502(g) of HIPAA.
- d. “Protected Health Information” shall mean all patient information that is considered Protected Health Information under HIPAA that Business Associate creates, receives, maintains, or transmits on Covered Entity’s behalf.
- e. All other capitalized terms used but not defined herein shall have the same meaning as defined in HIPAA.

2. **Use and Disclosure of Protected Health Information by Business Associate.**

- a. *Use and Disclosure in Fulfillment of the Services Agreement.* Provided the use or disclosure is not otherwise limited by this Agreement or by applicable law and would not violate HIPAA if done by the Covered Entity, Business Associate has the right to use and disclose Protected Health Information solely for the following purposes:
 - i. as expressly permitted by the Services Agreement or as necessary to perform the services under the Services Agreement;
 - ii. as required by the Services Agreement; and

iii. as Required By Law, consistent with Section 2.b. below.

If Business Associate is not an individual, it agrees to inform and educate its workforce on its obligations under this Agreement, including the consequences of its breach, and agrees to limit access to Protected Health Information by its workforce to the Minimum Necessary for the accomplishment of the workforce member's job.

- b. *Use and Disclosure for Management and Administration.* Business Associate may use Protected Health Information as necessary for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate. Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, but only if:
- i. the disclosure is Required By Law; or
 - ii. Business Associate obtains reasonable assurances from the recipient of such information that the information will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed, any confidentiality breach of which the recipient becomes aware will be reported to Business Associate, and Business Associate conducts reasonable due diligence of the recipient's information security practices and concludes that such practices are reasonable.

Business Associate only may disclose Protected Health Information as Required By Law provided that Business Associate makes a reasonable effort to notify Covered Entity prior to the Disclosure if such notification is permissible under law and Business Associate cooperates with any of Covered Entity's reasonable attempts to challenge or limit the disclosure.

- c. *De-identification of Protected Health Information.* Business Associate may not use Protected Health Information to create de-identified information, except as necessary to perform the services under the Services Agreement, without Covered Entity's written prior approval.
- d. *Uses and Disclosures of Protected Health Information Outside of the United States.* Business Associate shall not knowingly create, receive, maintain, or disclose Protected Health Information on Covered Entity's behalf outside of the United States, or allow a Subcontractor to do so, without Covered Entity's prior written approval.
- e. *Appropriate Safeguards.* Business Associate shall use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic Protected Health Information, to prevent the use or disclosure of Protected Health Information other than as provided in this Agreement.
- f. *Compliance with Security Rule.* Business Associate shall comply with the applicable requirements of Subpart C of 45 C.F.R. Part 164.
- g. *Reporting of Violations.* Business Associate shall notify Covered Entity of any use or disclosure of Protected Health Information by Business Associate, its workforce, contractors, or agents of which it becomes aware that is in violation of the terms of this Agreement. Business Associate also shall notify Covered Entity of any Security Incident of which it becomes aware. Such notices shall be in writing and shall be provided within

ten (10) business days after the date that Business Associate first discovers the Security Incident or unauthorized use or disclosure of Protected Health Information, as applicable. This Section shall hereby serve as Business Associate's notice, and no additional reporting shall be required, of the continuing occurrence of unsuccessful attempts at unauthorized access, use, disclosure, modification, or destruction of information or unsuccessful interference with system operations in an information system. To the extent that the incident triggers state breach notification laws, Business Associate's notification shall also comply with such laws.

Without unreasonable delay, and in no case later than 30 calendar days after the Business Associate's initial discovery of the Security Incident or unauthorized use or disclosure of Protected Health Information, Business Associate shall supplement the initial notification with either: (1) documentation (such as a breach risk assessment demonstrating a low probability of compromise) that the Security Incident or unauthorized use or disclosure does not constitute a Breach of Unsecured Protected Health Information; or (2) the information required by 45 C.F.R. § 164.410.

- h. *Contracts with others.* In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), Business Associate shall ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of Business Associate agree in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information. Furthermore, Business Associate shall conduct reasonable due diligence of a Subcontractor's information security practices and conclude that such practices are reasonable before allowing a Subcontractor to create, receive, maintain, or transmit Protected Health Information on Business Associate's behalf.
- i. *Right of Access by Individual.* Business Associate shall provide access, within ten (10) business days of a request by Covered Entity, to Protected Health Information contained in a Designated Record Set. Said access shall be given to Covered Entity or, as directed by Covered Entity, to the Individual who is the subject of the Protected Health Information or who may otherwise be entitled to review said information under HIPAA as determined by Covered Entity, in a time and manner sufficient for Covered Entity to meet the provisions of 45 C.F.R. § 164.524, and as applicable, any provisions relating to access to Protected Health Information contained in an electronic health record which are set forth in the HITECH Act or any regulations issued thereunder. In the event any Individual requests access to Protected Health Information directly from Business Associate, Business Associate shall forward such request to Covered Entity within two (2) business days.
- j. *Right of Amendment.* Business Associate shall make any amendment(s), within ten (10) business days of a request by Covered Entity, to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526, and in the time and manner sufficient for Covered Entity to meet the provisions of 45 C.F.R. § 164.526. In the event any Individual requests amendment to Protected Health Information directly from Business Associate, Business Associate shall forward such request to Covered Entity within two (2) business days.
- k. *Accounting of Disclosures.* Business Associate shall document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528, and as applicable, any requirements relating to accounting of disclosures of Protected Health

Information through an electronic health record which are set forth in the HITECH Act or any regulations issued thereunder. Within ten (10) business days of receiving a written request from Covered Entity, Business Associate shall provide to Covered Entity such information collected and documented in accordance with this Section to permit Covered Entity to respond to a request for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528 and any applicable requirements of the HITECH Act or the regulations issued thereunder. In the event any Individual requests an accounting of disclosures of Protected Health Information directly from Business Associate, Business Associate shall forward such request to Covered Entity within two (2) business days.

- l. *Access by Secretary.* Business Associate shall provide access to its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received on behalf of, Covered Entity. Said access shall be given to the Secretary for the purposes of the Secretary determining Covered Entity's compliance with HIPAA. Nothing in this Section shall be construed as a waiver of any legal privilege or of any protections for trade secrets or confidential commercial information. Business Associate shall immediately notify Covered Entity of such request from the Secretary pertaining to an investigation of Covered Entity's compliance with HIPAA.
- m. *Return or Destruction of Protected Health Information at Termination.* Business Associate agrees that this Agreement shall automatically terminate upon termination of the Services Agreement. Upon termination of this Agreement for any reason, whether as a result of termination of the Services Agreement or earlier if pursuant to Section 4c or 4d below, Business Associate shall return or destroy, if feasible, all Protected Health Information that it maintains or controls. Business Associate shall make reasonable efforts to obtain the return or destruction of all Protected Health Information from any Subcontractors. Business Associate shall not destroy Protected Health Information, or permit a Subcontractor to destroy Protected Health Information, without first providing Covered Entity a reasonable opportunity to receive or obtain a copy of the Protected Health Information in Covered Entity's preferred form and format, to the extent feasible. Business Associate may not charge Covered Entity more than the reasonable cost of preparation and transmittal of such Protected Health Information. If Business Associate destroys Protected Health Information after termination of this Agreement, it shall destroy the information consistent with the Secretary's guidance on rendering Protected Health Information Unusable, Unreadable, or Indecipherable and shall provide Covered Entity with a certificate of destruction for its records. If such return or destruction is not feasible, Business Associate shall (i) notify Covered Entity of the conditions or circumstances that make the return or destruction of such Protected Health Information infeasible; (ii) extend the protections of this Agreement to the retained Protected Health Information; and (iii) limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- n. *Compliance with Privacy Rule.* To the extent Business Associate is to carry out Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations.
- o. *Mitigation.* Business Associate agrees to mitigate, to the extent practicable, any potential harmful effect of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement, including without limitation, to perform

any mitigation activities reasonably directed by Covered Entity and reimburse Covered Entity for all costs incurred by Covered Entity to mitigate, in accordance with HIPAA, any such prohibited use or disclosure of Protected Health Information

3. Obligations of Covered Entity.

- a. *Agreed Upon Restriction.* Covered Entity shall provide Business Associate with a copy of any applicable restrictions on the use and disclosure of Protected Health Information that has been requested by an Individual and agreed to by Covered Entity, to the extent such restrictions affect Business Associate's obligations under this Agreement.
- b. *Changes and Revocation by Individual.* Covered Entity shall provide Business Associate with notice regarding any changes to, or revocation of, authorization by an Individual to use or disclose Protected Health Information, to the extent such changes affect Business Associate's obligations under this Agreement.

4. Termination of this Agreement.

- a. *Coordination of Terms.* The terms of the Services Agreement and this Agreement shall be coordinated as follows:
 - i. *Term of Agreement.* The obligations of Business Associate under this Agreement shall survive the early or natural termination of this Agreement, and shall remain in full effect and force pursuant to Section 2m above for so long as Business Associate maintains Protected Health Information in any form which it has received from Covered Entity.
 - ii. *Term of Services Agreement.* Nothing contained in this Agreement, including the potential perpetual obligation of Business Associate under Section 2m of this Agreement, shall operate to extend the obligations of the parties under the Services Agreement beyond its early or natural termination except as may be specified in the Services Agreement.
- b. *Natural Termination.* This Agreement shall automatically terminate upon the termination of the Services Agreement as described more fully in Section 2m above.
- c. *Termination of Agreement by Covered Entity.* Should Covered Entity become aware of a material breach of the terms and conditions of this Agreement by Business Associate, Covered Entity shall, in its sole and absolute discretion and at any time during an ongoing breach, either: (i) provide Business Associate a reasonable opportunity to cure the breach; or (ii) terminate this Agreement immediately.

5. Coordination with Services Agreement. Where this Agreement is silent on any term, including, but not limited to the provision of notices, governing law or dispute resolution, said term shall be supplied, if included, by the Services Agreement. However, this Agreement shall control in the event of any conflict between its terms and the terms of the Services Agreement.

6. Miscellaneous.

- a. Should Covered Entity prevail in a legal action instituted to enforce any of its rights set forth in this Agreement, then Covered Entity shall be entitled to reimbursement for all reasonable attorneys' fees and costs incurred as determined by the court.
- b. This Agreement may not be modified or amended, except in writing as agreed to by each party. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of HIPAA and the HITECH Act.
- c. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with HIPAA. Business Associate represents to Covered Entity that it has read and understands the requirements of HIPAA that relate to its obligations under this Agreement.
- d. This Agreement shall be construed in accordance with the laws of the State of Tennessee, unless a different State's laws are specifically provided for in the Services Agreement. Additionally, Business Associate shall comply with any laws of the State of Tennessee which are applicable to Covered Entity's or Business Associate's disclosure or use of health or personal information provided by Covered Entity to Business Associate under the Agreement.
- e. The parties acknowledge that the use or disclosure of Protected Health Information in a manner inconsistent with this Agreement will cause Covered Entity irreparable damage and that Covered Entity shall have the right to equitable and injunctive relief to prevent the unauthorized use or disclosure and to such damages as are occasioned by such unauthorized use or disclosure in addition to other remedies available at law or in equity. Covered Entity's remedies under this Agreement and the Services Agreement shall be cumulative, and the exercise of any remedy shall not preclude the exercise of any other.
- f. The Parties agree that the Protected Health Information is, and shall remain, the property of Covered Entity.
- g. Nothing in this Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

IN WITNESS WHEREOF, Covered Entity and Business Associate have caused this Agreement to be executed by their duly authorized representatives as of the day and year first set forth above.

Covered Entity
UUSD 214

Business Associate
EMD ANYWHERE, LLC

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Schedule H

DA 146-A

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.