



REPORT TO COUNCIL

City of Sacramento

915 I Street, Sacramento, CA 95814-2604

www.CityofSacramento.org

4

Consent

July 27, 2010

Honorable Mayor and
Members of the City Council

Title: Agreement: Purchase of HealthEMS electronic Pre-Hospital Care Report (ePCR) system [2/3 Vote Required]

Location/Council District: Citywide

Recommendation: Adopt a **Resolution** 1) suspending competitive bidding in the best interests of the City for the purchase of Sansio-HealthEMS ePCR and 2) authorizing the City Manager, or his designee, to execute the HealthEMS Subscription Agreement, attached hereto as Exhibit A and incorporated by reference, for the purchase of Sansio-HealthEMS ePCR system in an amount of up to \$50,000 per year up for three years for a total of \$150,000 through June 30, 2013, with the option to renew for two additional one-year terms for a total expenditure not to exceed \$250,000, and authorize the City Manager, or his designee, to authorize such renewal(s), provided that sufficient funds are available in the budget adopted for the applicable Fiscal Year(s).

Contact: Joseph A. D. Jackson, Assistant Chief, 264-8100

Presenters: N/A

Department: Fire

Division: Emergency Medical Services (EMS)

Organization No: 12001441

Description/Analysis

Issue: The existing contract for ePCR storage and billing system with Sansio-HealthEMS has expired. Sacramento Fire Department (SFD) requires a customized ePCR storage and billing system based on the unique needs and operations of the SFD Emergency Medical Services (EMS) as well as compliance with the requirements set by the County, State, and Federal EMS regulations. After two years of evaluation and one year of usage of the Sansio-HealthEMS ePCR system, staff is recommending the City Council to suspend competitive bidding and authorize the City Manager, or his designee, to approve the HealthEMS Subscription Agreement, attached hereto as Exhibit A, for the purchase of this system in an amount of up to \$50,000 per year up for three years for a total of \$150,000 through June 30, 2013, with the option to renew for two additional one-year terms for a total expenditure not to exceed \$250,000

Policy Considerations: The recommendations in this report are in accordance with provisions of the City Code Section 3.56.230, which explains a two-thirds vote by

Council is required to suspend competitive bidding for any purchase or contract, and City Code section 3.56.090, which requires Council approval for any contracts over \$100,000.

Environmental Considerations:

California Environmental Quality Act (CEQA): This report concerns administrative activities that do not constitute a “project” as defined by section 15378 of the California Environmental Quality Act (CEQA) Guidelines and is otherwise exempt pursuant to sections 15061(b)(3); 15378(b)(2).

Sustainability Considerations: There are no sustainability considerations applicable to approving the HealthEMS Subscription Agreement.

Commission/Committee Action: N/A

Rationale for Recommendation: In providing Advanced Life Support (ALS) services, SFD medics and Emergency Medical Technicians (EMTs) are required to document patient care to comply with local EMS protocols, California EMS Information System (CEMIS) and National EMS Information System (NEMIS) data-collection requirements. This documentation is also required for billing purposes.

The contract SFD has been using to purchase an ePCR system has expired. In researching potential vendors with comparable systems, SFD evaluated and found that Sansio-HealthEMS is a tested and proven system that SFD EMS has used with great success in the past two years. Unlike other products in the market, Sansio-HealthEMS offers a hybrid system which allows SFD personnel to use the ePCR system and/or a backup paper PCR system in case of issues with the electronic devices or web access.

This system offers wireless data exchange between Computerized Aided Dispatch (CAD) and Electro-cardiogram (ECG) which eliminates manual entry, thus reducing user error rate on data collected. Sansio-HealthEMS also provides Quality Assurance (QA) solutions which supports Continuous Quality Improvement (CQI) and regulatory reporting.

The Sansio-HealthEMS system has an electronic billing interface with automated ICD-9 coding, medical necessity, and service level determination that allows SFD to bill insurance and patients more accurately and efficiently. This system is already integrated with the local hospitals, Sacramento County Coroner's Office, and SFD's biller and provides two-way communication of ePCR data. In addition, Sansio's solutions include HealthEMS(r), a remote-hosted, web-based field data collection, management, and reporting system which eliminates the need for costly servers and IT staff support.

As well, Sansio-HealthEMS upgrades their system regularly based on the changing requirements of the healthcare system, County, State, and Federal regulations.

Financial Considerations: The annual cost of the contract is approximately \$50,000. Funding is available in the Fire Department operating budget.

Emerging Small Business Development (ESBD): Sansio-HealthEMS is not a certified ESBD.

Respectfully Submitted by: Joseph A. D. Jackson
Joseph A. D. Jackson
Assistant Chief

Approved by: Ray S. Jones
Ray S. Jones
Fire Chief

Recommendation Approved:

Cassandra H.B. Jimenez
for Gus Vina
Interim City Manager

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RESOLUTION NO.

Adopted by the Sacramento City Council

AGREEMENT: PURCHASE OF HealthEMS ePCR SYSTEM

BACKGROUND

- A. The Sacramento Fire Department (SFD) requires a customized electronic Pre-Hospital Care Report (ePCR) storage and billing system based on the unique needs and operations of the SFD Emergency Medical Services (EMS), as well as, compliance with the requirements set by the County, State, and Federal EMS regulations.
- B. The current contract SFD has been using to purchase an ePCR system has expired. In researching potential vendors that offer such a system, SFD evaluated several existing companies and found that Sansio-HealthEMS is a tested and proven system that SFD EMS has used with great success in the past two years. Unlike other products in the market, Sansio-HealthEMS offers a hybrid system which allows SFD personnel to use the ePCR system and/or a backup paper PCR system in case of issues with the electronic devices or web access.
- C. The Sansio-HealthEMS system offers wireless data exchange between Computerized Aided Dispatch (CAD) and Electro-cardiogram (ECG) which eliminates manual entry thus reducing user error rate on data collected. Sansio-HealthEMS, also, provides Quality Assurance (QA) solutions which supports Continuous Quality Improvement (CQI) and regulatory reporting.
- D. The Sansio-HealthEMS system has an electronic billing interface with automated ICD-9 coding, medical necessity, and service level determination that allows SFD to bill insurance and patients more accurately and efficiently. This system is already integrated with the local hospitals, Sacramento County Coroner's Office, and SFD's biller and provides two-way communication of ePCR data. In addition, Sansio's solutions include HealthEMS(r), a remote-hosted, web-based field data collection, management, and reporting system which eliminate the need for costly servers and IT staff support.
- E. Sansio-HealthEMS upgrades the system regularly based on the changing requirements of the healthcare system, County, State, and Federal regulations.
- F. Based on the above, it is in the City's best interest to suspend competitive bidding and purchase Sansio-HealthEMS ePCR. The three-year agreement with Sansio-HealthEMS would allow for the purchase of an ePCR system based on the department's specific requirements and complies with the Sacramento County EMS requirements. This contract will be utilized by SFD at an annual amount not to exceed \$50,000 for up to three years not to exceed \$150,000 through June 30, 2013, with the option to renew for two additional years for a total expenditure not to exceed \$250,000.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL
RESOLVES AS FOLLOWS:**

- Section 1. In the best interests of the City, competitive bidding is hereby suspended for the purchase of Sansio-HealthEMS ePCR.
- Section 2. The City Manager, or his designee, is hereby authorized to execute the HealthEMS Subscription Agreement, attached hereto as Exhibit A and incorporated by reference, for the purchase of Sansio-HealthEMS ePCR system in an amount of up to \$50,000 per year up for three years for a total of \$150,000 through June 30, 2013, with the option to renew for two additional one-year terms for a total expenditure not to exceed \$250,000. The City Manager, or his designee, may authorize such renewal(s) for the annual not to exceed amount specified above, provided that sufficient funds are available in the budget adopted for the applicable Fiscal Year(s).

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Exhibit A- HealthEMS Subscription Agreement



SUBSCRIPTION AGREEMENT

This HealthEMS® Subscription Agreement (the "Agreement"), is between ScanHealth, Inc., a Minnesota corporation, d/b/a Sansio, ("Sansio"), and the undersigned customer ("Customer").

1. HealthEMS® SYSTEM. ("System")

- 1.1 **Licensed Software.** The Licensed Software is the HealthEMS® Software, a web-enabled application that performs data collection, analysis, and reporting over the Internet (the "Licensed Software") for the Emergency Medical Services (EMS) industry. Sansio owns all rights to this software.
- 1.2 **Professional Services.** Sansio makes available numerous professional services ("Professional Services") per Section 4 to help maximize your investment in HealthEMS®. Services include, but may not be limited to, Application Support, Classroom Training, Web Training, Consulting and Educational Resources.
- 1.3 **Data Center Services.** The Data Center ("Data Center") is comprised of infrastructure and services that host, manage, and support the HealthEMS® Software. Sansio is responsible for the Data Center as defined in Section 5.2 up to the point of external Internet access. It is the responsibility of Customer to procure applicable hardware, software, and Internet connectivity with sufficient bandwidth to meet user demands.
- 1.4 **Data Collection Services.** Sansio provides flexible point-of-service (POS) data collection solutions using the HealthEMS® proprietary electronic Pre-hospital Care Report ("ePCR") using intelligent scannable forms or mobile hardware and a secure file transfer program that uploads data via the Internet (the "Data Collection Services"). Certain data collection services require Customer to procure and support hardware that meets the specifications set forth by Sansio. Sansio shall not be responsible for any loss or damages caused by the failure or nonperformance of any of the System described herein, and license fees due pursuant to Section 2 of this Agreement shall continue to accrue notwithstanding to any period of down-time caused thereby.
- 1.5 **System Integration Services.** Sansio integrates the System with numerous third-party systems, such as CAD (Computer-Aided Dispatch), medical devices, billing, and state reporting systems. These integration services may be provided on a fee-for-services basis or may be included in Subscription Fees, evaluated on a case-by-case basis. Customer is responsible for acquiring licenses and paying fees for any third party integration software required.

2. LICENSE AND FEES.

- 2.1 **License.** Sansio hereby grants to Customer a non-exclusive, non-transferable (except as provided in this Agreement) license to access the System over the Internet. Hosting and deployment of the System is provided by Sansio. Sansio will invoice Customer monthly for Subscription Fees as set forth in Schedule A contracted for under this Agreement.
- 2.2 **Fees.**
 - 2.2.1 **Activation Fee.** Activation Fee is the one-time per Provider initial System Activation and Provider Set-up as set forth on Schedule A.
 - 2.2.2 **Initial Payment.** Initial Payment from Customer is due upon acceptance of this Agreement. Initial Payment is the Activation Fee as set forth in Schedule A.
 - 2.2.3 **Subscription Fees.** Customer agrees to pay Subscription Fees as set forth on Schedule A, which forms a part of this Agreement. In the event the Customer's actual annual run volume varies from Estimated Annual Run volume, as identified on Schedule A, by more than +/- 10%, Sansio reserves the right to make adjustments to the Subscription Fees provided the Customer is given 60 days

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prior written notice of such adjustment. Subscription Fees include: Data Center Services, Data Collection Services, application licensing, system maintenance, Application Support, system upgrades, and Core Classroom Training scheduled at Sansio's corporate training center.

2.2.4 Monthly Invoicing. Following identification of Customer's System Activation Date as set forth in Schedule B, Sansio will invoice the Customer as set forth in Schedule A. Customer will be invoiced monthly installment fees 30 days in advance, due and payable by the first of the month during the Term identified in 6.1. Shipping costs for any scannable ePCR sheets used by Customer remain the responsibility of the Customer and will be included in the monthly subscription invoice.

2.2.5 Taxes: Sansio is required to collect sales tax from products and services provided to customers in certain states. Sansio reserves the right to invoice the Customer those taxes now or at any time in the future, including interest and penalties imposed by any governmental authority which are imposed upon the sale or delivery of items purchased or licensed. Customer is required to complete Exhibit T in order for Sansio to correctly identify tax status.

If a certificate of exemption or similar document or proceeding is to be made in order to exempt the sale from sales or use tax liability, Customer will obtain and purchase such certificate, document or proceeding.

2.2.6 Interests and Costs. Amounts not paid when due will bear interest at the rate of 1.5% per annum on the unpaid balance each month, or such lesser rate of interest as shall be the maximum amount chargeable with respect to this account under the law in effect in the state of Customer's location. In the event of non-payment or default by Customer, Customer agrees that all costs of enforcement and collection, including reasonable attorneys' fees, will be paid by Customer.

3. INITIAL SETUP.

3.1 Customer's Responsibilities for Setup. Customer must provide Internet connectivity to the System web site with sufficient bandwidth to meet Customer's utilization demands. System performance is a function of bandwidth and latency time from client hardware to the System web site. Customer must connect with Firefox 2.0 or Microsoft Internet Explorer 6.2 or higher.

3.2 Customer Passwords. Both a Logon Identity and a password are necessary to access the System through the Web site. The password provides vital security in preventing unauthorized access to Customer's Data and Confidential Information. Customer is responsible for keeping and maintaining the security of the passwords that are assigned to Customer. Sansio shall have no responsibility for unauthorized access to Customer's Data or Confidential Information that results from Customer's failure to keep secure the assigned passwords.

3.3 System Activation Date. Following identification by Customer and Sansio of Customer's Activation Date ("Activation Date") as set forth in Schedule B, Sansio will invoice the Customer as set forth in Schedule A. The System Activation Date is the date at which Sansio will activate the System to allow for Customer set-up of the Licensed Software via the Data Center. The System Activation Date represents the first day of the Subscription Term. Once a mutually agreeable system Activation Date has been set, Sansio will invoice Customer for the first monthly Subscription Fee as set forth in Schedule A.

4. PROFESSIONAL SERVICES.

4.1 Application Support. Sansio provides phone and web-based Application Support of the System at no additional cost to Customers who have successfully completed Core Classroom Training and are active Users. Application Support is defined as help with application navigation or troubleshooting arising from the use of the System, as designed. Sansio's Call Center is staffed during prime Customer business hours, Monday - Friday, 7AM - 6PM CT, excluding major holidays. After hours or "non-prime" hours include 6PM - 7AM CT Monday - Thursday, and 6PM CT on Friday through 7AM CT the following Monday and on major holidays. Support tickets started outside of prime Call Center hours will be addressed the next business day. Inquiries regarding system availability are supported by Sansio on-call technical staff during non-prime Call Center hours. Application Support excludes supporting Customer procured hardware, OS and Internet connectivity.

4.2 Classroom Training. Sansio offers training regarding the use of the System for the benefit of its Customers. Customer will be required to participate in Sansio's Core Classroom Training ("Core Classroom Training") at its corporate offices in Duluth, MN. Dates for Core Classroom Training will be confirmed by Sansio's staff and sessions will be scheduled no earlier than three (3) weeks from receipt of signed Subscription Agreement and Initial Payment as set forth on Schedule A. Classroom training in addition to Core Classroom Training is free for active Users at Sansio's corporate offices in Duluth, MN. Attendance at Sansio's regularly scheduled Core Classroom Training courses must be requested and coordinated through Sansio's staff. Customer will be responsible for its own travel and accommodations.

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- 4.3 **Project Manager Implementation Support.** Sansio shall provide Customer with Project Manager Implementation Support to assist Customer with implementing the System. Project Manager Implementation Support will be provided at no additional charge to Customer for up to 6 months starting from the date of execution of this Agreement. Additional Project Manager Implementation Support requested by Customer will be charged at Sansio's hourly rates for Consulting services as set forth in Section 4.5.
- 4.4 **Web Training.** Through the use of the Internet, Sansio is able to provide supplemental Web Training on focused sections of the application. Examples of additional remote training are modularized training for new employees, including documentation, scanning, billing, etc. Web Training will be provided to the Customer at Sansio's hourly rates.
- 4.5 **Consulting.** Sansio provides Consulting services to Customers requiring support over and above standard Application Support. Consulting is defined as Customer assistance that requires specific knowledge of the Customer's data set, research goals, and operational objectives. Consulting services are available both onsite and online. Consulting services will be provided to the Customer at Sansio's regular hourly rates. Upon Customer's request, Sansio shall schedule consulting services at its earliest convenience.
- 4.6 **Educational Resources.** Sansio provides numerous Educational Resources for Customers which should be used before contacting the Call Center for Application Support. These include user guide(s), training videos, Frequently Asked Questions (FAQs) and important industry links to other websites.
- 4.7 **Invoicing.** Customer shall reimburse Sansio for any reasonable out of pocket expenses including travel to and from the Customer site, lodging, meals, telephone, and shipping, as may be necessary in connection with duties performed under this Agreement by Sansio. No travel expenses shall be reimbursed except for travel pre-approved by Customer. Sansio shall invoice Customer for such additional services and out of pocket expenses. Payment shall be due within thirty (30) days from the date of invoice.

5. DATA CENTER SERVICES.

- 5.1 **System Maintenance.** Sansio will provide software upgrades and enhancements at the same time as generally available to other licensees. Sansio is responsible for installing upgrades and enhancements for Customer's use at no charge to Customer. Backups of hosted applications and data are performed on a weekly (full) and nightly (incremental) basis. Backups will be scheduled at times so as to provide minimal impact to Customer's business activity. Customer will not have access to the System during times of scheduled maintenance.
- 5.2 **System Access Level.** Sansio is not responsible for loss of access to the Data Center for reasons that are beyond Sansio's reasonable control. With the exception for loss of access that is beyond Sansio's reasonable control, Sansio shall maintain a level of access to the Data Center (excluding periods of emergency maintenance) of 99.8% Access Availability ("**Access Availability**"), 24 hours a day, 7 days a week, including holidays. System Access Unavailable ("**System Access Unavailable**") is defined as the reported unscheduled inability of all subscribed users of Customer to access the Data Center and verification that the problem is within the Data Center. Total System Access Unavailable minutes are calculated by adding the period of time beginning when the Customer reports System Access Unavailable to Sansio's Customer Support and ending when Sansio's Customer Support corrects the unavailable status and closes the incident with the Customer. If the Customer does not initiate a Customer Support call, Sansio will not be obligated to issue a System Access Unavailable Credit ("**System Access Unavailable Credit**") for the System Access Unavailability. Sansio will compute any System Access Unavailability on a quarterly average basis and apply a System Access Unavailable Credit to the next Customer invoice in the event that the stated Access Availability commitment was not met. This occurs on a prorated basis limited to the maximum of the total invoice charges based on the total billing period. System Access Unavailable Credits will not be given for events occurring during any period in which the Customer's account has an undisputed past due balance or the Customer is otherwise in breach of Agreement. The System Access Unavailable Credit will be calculated according to the following schedule:

| | | |
|-------|----------|-------------------------|
| 99.8% | - 100% | Covered under Agreement |
| 99.5% | - 99.79% | (1) day credit |
| 98.5% | - 99.49% | (2) days credit |
| 97.5% | - 98.49% | (1) week credit |
| 96.5% | - 97.49% | (2) weeks credit |
| 0% | - 96.49% | (1) month credit |

6. TERM AND TERMINATION.

- 6.1 Term Initiation.** This Agreement takes effect on the latest signature date below and continues through the conclusion of the Subscription Term or any subsequent Renewal Subscription Term. The Subscription Term (the "Term") begins on the System Activation Date and ends at the conclusion of the period set forth in Schedule A or any subsequent Renewal Schedule A's. Subscription Fees commence on the System Activation Date and continue throughout the Term of this Agreement. Upon acceptance of this Agreement, Sansio will provide Customer with an access code to use the Licensed Software via Sansio's Data Center and the Internet.
- 6.2 Term Renewal.** This Agreement may be renewed upon such terms and for such period set forth in a new Schedule A (the "Renewal Schedule A") provided by Sansio and executed by Customer within sixty (60) days before the end of the then current Term. If Customer does not execute the Renewal Schedule A, this Agreement shall automatically terminate upon expiration of the then current Term.
- 6.3 Termination.** Either party may terminate the Agreement upon the other party's material breach of this Agreement, if within 30 days of receipt of written notification of breach (10 days in the case of non-payment), the breaching party has failed to cure its breach. Sansio may terminate Customer's access to the System immediately upon Termination of the Agreement. In the event of early Termination due to material breach by Customer, Customer shall be responsible for Early Termination Fee per Section 6.4 of this Agreement. In the event of early Termination due to material breach by Sansio, Customer shall not be responsible for Early Termination Fee as set forth in Section 6.4.

Notwithstanding anything in this Section 6 or in this Agreement to the contrary, Customer may terminate this Agreement and Customer obligations hereunder during the initial Term or any subsequent renewal Term, without cause, for any reason, or for no reason, and in Customer's sole and absolute discretion by payment to Sansio of the Early Termination Fee as set forth in Section 6.4. Sansio acknowledges and agrees that payment of such Early Termination Fee shall be Sansio's sole remedy therefore. Customer must notify Sansio of its intention for early Termination by written notification at least 90 days before the desired Termination date. Early Termination must occur on a monthly anniversary of the then current Term.

Notwithstanding any term or provision in this Agreement to the contrary, at request of Customer, Sansio will perform one XML export of Customer's data and provide that export to Customer within 20 days of Termination or expiration of this Agreement, at no charge.

- 6.4 Early Termination Fee.** Upon early Termination for breach by Customer or for such other early Termination as described in Section 6.3 of this Agreement, Sansio reserves the right to charge Customer a pro-rated termination fee based on the percentage of the current Term utilized. The percentage will be applied to the remaining Subscription Fees for the current Term as selected by Customer on Schedule A. Sansio acknowledges and agrees the Early Termination Fee will be Sansio's sole remedy therefore.

| | | |
|-----------------|---|-------------------------------|
| Example: | Current Term Length: | 36 month |
| | Desired Early Termination Date: | end of month 30 |
| | Percentage of Term Utilized: | 83% |
| | Pro-Rated Termination Percentage: | 17% |
| | Monthly Subscription Fee: | \$ 2,000 (Per Schedule A) |
| | Remaining Subscription Fees per current Term: | \$12,000 (6 months @ \$2,000) |
| | Early Termination Fee: | \$ 2,040 (17% of \$12,000) |

7. PROPRIETARY RIGHTS OF SANSIO IN THE LICENSED SOFTWARE.

- 7.1 Nature of Rights and Title.** Customer acknowledges that the System and System documentation manuals and other proprietary materials supplied by Sansio to Customer are and shall remain the property of Sansio and nothing in this Agreement shall be construed as transferring any aspect of such rights to Customer or any third party. Any changes, additions, and enhancements in the form of new or partial programs or documentation as may be provided under this Agreement shall remain the proprietary property of Sansio. Customer agrees with Sansio that the System documentation and all other proprietary information or data supplied by Sansio are trade secrets of Sansio, are protected by civil and criminal law, and by the law of copyright, are very valuable to Sansio, and that their use and disclosure must be carefully and continuously controlled. Customer further understands that operator manuals, training aids and other written materials regarding the System are subject to the Copyright Act of the United States. Customer shall keep each and every item to which Sansio retains title free and clear of all claims, liens and encumbrances except those of Sansio and any act of Customer, voluntary or involuntary, purporting to create a claim, lien or encumbrance on such an item shall be void.
- 7.2 Unauthorized Acts.** Customer agrees to notify Sansio promptly of the unauthorized possession, use, or knowledge of any item supplied under this license and of other information made available to Customer

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under this Agreement, by any person or organization not authorized by this Agreement to have such possession, use or knowledge. Customer will promptly furnish full details of such possession, use or knowledge to Sansio, will assist in preventing the continuation or recurrence of such possession, use or knowledge, and will cooperate with Sansio in any litigation against third parties deemed necessary by Sansio to protect its proprietary rights. Customer's compliance with this subparagraph shall not be construed in any way as a waiver of Sansio's right, if any, to recover damages or obtain other relief against Customer for its negligent or intentional harm to Sansio's proprietary rights, or for breach of contractual rights.

7.3 Remedies. If Customer attempts to use, copy, license, sub-license or otherwise transfer the Licensed Software or access to the System supplied by Sansio under this Agreement, in a manner contrary to the terms of this Agreement or in competition with Sansio or in derogation of Sansio's proprietary rights, whether these rights are explicitly stated, determined by law, or otherwise, Sansio shall have the right to injunctive relief enjoining such action, in addition to any other remedies available. Customer acknowledges that other remedies are inadequate.

7.4 Infringement Indemnification. Sansio shall indemnify, defend and hold harmless Customer from and against any and all loss, cost, damage or liability, including reasonable attorneys' fees and expenses, arising out of or relating to any claim or cause of action for patent, copyright, and/or other intellectual property infringement ("**Infringement Claim**") asserted against Customer by virtue of the System, Software or Documentation or Customer's use or possession of the System, Software or Documentation pursuant to this Agreement. Sansio shall defend and settle at its sole expense all suits and proceedings arising out of the foregoing, provided that Customer gives Sansio prompt notice of any such Infringement Claim of which it learns. In all events, Customer shall have the right to participate at its own expense in the defense of any such suit or proceeding through counsel of its own choosing. In the event any Infringement Claim is asserted by a third party with respect to the System or Customer's use thereof, then and in that event, Customer may terminate its use of the System and/or this Agreement without payment of any Early Termination Fee.

8. CONFIDENTIALITY.

8.1 Confidential Information. The parties agree that any Confidential Information provided under this Agreement shall be held and maintained in strict confidence. Each party agrees to protect the Confidential Information of the other party in a manner consistent with the protections used to protect its own Confidential Information, including, without limitation, informing its employees of its obligations under this Agreement and taking such steps as are reasonable in the circumstances, or as reasonably requested by the other party, to prevent any unauthorized disclosure, copying or use of Confidential Information. "Confidential Information" means any proprietary material that the disclosing party designates as confidential. "Confidential Information" shall also include, without limitation, all information in any form which relates to the business, expertise and/or operations of the disclosing party, including without limitation, information in any form generally understood to be trade secret, proprietary or confidential and/or that is related to products and services, commercial and financial information, system functionality charts and descriptions, program code logic, trade secret information, and information about health care providers, customers and/or business partners. "Confidential Information" shall also include Protected Health Information as defined in Section 12 below. Sansio will not use "Confidential Information" except as expressly provided in this Agreement. "Confidential Information" does not include information that (i) is already known to the receiving party at the time it is disclosed and has not been obtained wrongfully, (ii) becomes publicly known without the fault of the receiving party, (iii) is independently developed by the receiving party, (iv) is approved for release in writing by the disclosing party, (v) is disclosed without restriction by the disclosing party to a third party, or (vi) is disclosed pursuant to applicable statutory or other legal obligation beyond the control of the receiving party.

8.2 Unauthorized Disclosure. The recipient of any Confidential Information shall, upon discovery of any unauthorized use or disclosure of such Confidential Information by recipient, or any other breach of these confidentiality obligations by the recipient, fully cooperate with the disclosing party to assist the disclosing party regain possession of the Confidential Information and prevent the further unauthorized use or disclosure of the Confidential Information.

8.3 Remedies. The parties acknowledge and agree that in the event of a breach of this Section 8, the non-breaching party will suffer irreparable injuries not compensable by money damages alone and therefore the non-breaching party will not have an adequate remedy at law. The non-breaching party shall be entitled to injunctive relief without the necessity of posting any bond or undertaking to prevent any further breach. Such remedy shall be in addition to any other remedy the non-breaching party may have.

9. LIMITED WARRANTY.

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

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

10. LIMITATION OF LIABILITY.

A party's liability for any actions, claims or damages arising out of or resulting from this Agreement or the System is limited to the amounts paid by Customer in the 12-month period preceding the damages. In no event will either party be liable for any special or consequential damages. Notwithstanding the foregoing, and notwithstanding any other provision of this Agreement to the contrary, no limitation of liability or limitation of warranty or disclaimer shall be applicable to Sansio's breach of its obligations under Section 7.4, Infringement Indemnification, or to a party's breach of its obligations under Section 8 and/or Section 12, it being the intent of the respective parties that the breaching party remain fully liable therefore.

11. DATA.

11.1 Use. Customer grants Sansio a perpetual, royalty-free license to compile, analyze, use and distribute de-identified aggregated data derived from information and data obtained through Customer's use of the System during the Term. Sansio represents and warrants that it will only employ methods to de-identify the data that do not involve actual disclosure of Protected Health Information to Sansio.

11.2 Backups. Customer's data will be backed up not less than that identified in Section 5.1. Sansio will maintain a copy of at least one full backup copy until after the next [daily/weekly] backup is performed. Backup will be maintained on a rolling basis and Sansio will not be responsible for archiving more than the most recent full (day's/week's) backup. Sansio will take commercially reasonable steps to maintain data integrity in any backup, but Sansio is not responsible for loss of data or data integrity so long as Sansio has performed the backup in a commercially reasonable manner.

11.3 Storage Allowance. Customer is provided an average storage allowance ("Storage Allowance") of 500KB per ePCR to accommodate data directly related to ePCRs. This allowance should provide adequate storage for typical use.

Additional storage is provided to accommodate attachments of rich media to ePCRs such as audio, video, etc. Customers wishing to store these additional files may exceed the Storage Allowance. If Customer exceeds Storage Allowance, the additional storage will be provided as follows.

The Monthly Storage Allowance is defined as 500KB multiplied by the number of Estimated Annual Runs divided by twelve (12). The Cumulative Storage Allowance is calculated as follows: (Monthly Storage Allowance Current Subscription Term) x (The number of months used during the Current Subscription Term) plus Total Storage Allowance from previous Term(s). The actual data storage used ("Actual Storage") will be compared to the Cumulative Storage Allowance on a calendar quarterly basis (March 31, June 30, Sept 30, and Dec 31). If Customer's Actual Storage exceeds the Cumulative Storage Allowance by 10%, and at least 5 GB, Customer will be charged Additional Storage Fees of \$10/month per gigabyte (GB) on a quarterly basis.

Storage Allowance Example:

| | | |
|---------------------------|--------|--------|
| ePCR Avg Allowance | 500 | KB |
| Estimated Annual Runs | 40,000 | Runs |
| Annual Storage Allowance | 19.07 | GB |
| No. Months in a Year | 12 | Months |
| Monthly Storage Allowance | 1.59 | GB |

Cumulative Storage Allowance v Actual Storage Calculation:

| Month | Allowance (GB) | Actual (GB) | Variance | | | Additional Storage | |
|-------|----------------|-------------|----------|-------|------------------|--------------------|-----------|
| | | | (GB) | % | GB > 5 (Rounded) | Yes/Mo | Qtrly Fee |
| 3 | 4.77 | 5.84 | 1.07 | 22.4% | 0.00 | No | \$0 |
| 12 | 19.08 | 24.16 | 5.08 | 26.6% | 6.00 | Yes | \$180 |
| 24 | 38.16 | 46.99 | 8.83 | 23.1% | 9.00 | Yes | \$270 |
| 36 | 57.24 | 72.66 | 15.42 | 26.9% | 16.00 | Yes | \$480 |
| 48 | 76.32 | 94.32 | 18.00 | 23.6% | 18.00 | Yes | \$540 |
| 57 | 90.63 | 115.19 | 24.56 | 27.1% | 25.00 | Yes | \$750 |

12. HIPAA.

Pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), and its implementing regulation, the HIPAA Privacy Regulations, including, but not limited to, 45 C.F.R. Parts 160 and 164, Subpart A and Subpart E (hereinafter the "Privacy Rule"), and HIPAA Security Regulations, including but not limited to, 45 C.F.R. Parts 160 and 164, Subpart A and Subpart C (hereinafter the "Security Rule"), all business associates of entities such as Customer must agree in writing to certain mandatory provisions regarding the use and disclosure of certain Individually Identifiable Health Information. In order to satisfy the requirements of the Privacy Rule effective upon the applicable compliance date set forth in 45 C.F.R., § 164.534 (the "Compliance Date"), and in order to satisfy the electronic storage requirements of the Security Rule as set forth in 45 C.F.R., § 164.318, the Parties agree as follows effective as of the Compliance Date:

- 12.1 Sansio acknowledges and agrees that in the course of performance of Sansio's obligations under this Agreement, Sansio might be given or obtain access to information which contains Protected Health Information. For purposes of this Agreement "Protected Health Information" (or "PHI") has the same meaning as set forth in 45 C.F.R. § 164.501, which generally includes any information, including demographic information, collected from an Individual that has been received or created by Customer and related to the past, present or future physical or mental health or condition of an Individual, the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an Individual, and identifies the Individual or with respect to which there is a reasonable basis to believe that the information can be used to identify the Individual. Furthermore, for purposes of this Agreement, "Protected Health Information" or "PHI" will be limited to information created or received by Sansio from or on behalf of Customer. For purposes of this Agreement, "Individual" means the person who is the subject of the PHI.
- 12.2 Sansio agrees to comply with applicable requirements of state and federal law relating to PHI. Sansio further agrees to reasonably cooperate with Customer in Customer's compliance with the Privacy Rule and the Security Rule.
- 12.3 Sansio will not use or further disclose PHI other than as permitted or required by this Agreement or as required by law.
- 12.4 Sansio will not use or further disclose PHI in a manner that would violate the requirements of the Privacy Rule or the Security Rule, if done by Customer.
- 12.5 Sansio will use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement. Sansio agrees to use appropriate administrative, physical and technical safeguards to

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Revised 05/15/09

protect the confidentiality, integrity and availability of any electronic PHI in accordance with the Security rule and at all times after the compliance date of the HIPAA Security Regulations.

- 12.6 Sansio will report to Customer any use or disclosure of PHI not provided for by this Agreement of which Sansio becomes aware.
- 12.7 Sansio will ensure that any agent, including a subcontractor, to whom Sansio provides PHI received from, or created or received by Sansio on behalf of, Customer agrees to the same restrictions and conditions that apply to Sansio with respect to such information.
- 12.8 Sansio will, at the request of Customer, make available Protected Health Information maintained by Sansio in a Designated Record Set (as defined in 45 C.F.R. § 164.501) to Customer in order for Customer to meet the requirements under 45 C.F.R. § 164.524.
- 12.9 Sansio will, at the request of Customer, make available for amendment, and allow Customer to incorporate any amendment(s) in, any Protected Health Information in a Designated Record Set maintained by Sansio, which the Customer directs or agrees to pursuant to 45 C.F.R. § 164.526.
- 12.10 Sansio agrees to make Sansio's internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Sansio on behalf of, Customer available to the Secretary of the United States Department of Health & Human Services for purposes of determining Customer's compliance with the Privacy Rule and the Security Rule. Sansio shall notify Customer upon receipt by Sansio of any such request.
- 12.11 To the extent Sansio discloses PHI and such disclosure would be subject to an accounting under 45 C.F.R. § 164.528, Sansio will document such disclosures of PHI and related information as would be required for Customer to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Sansio will provide to Customer, at Customer's request, such information so as to permit Customer to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- 12.12 Except as otherwise limited in this Agreement, Sansio may use PHI for the proper management and administration of Sansio or to carry out the legal responsibilities of Sansio. Except as otherwise limited in this Agreement, Sansio may disclose PHI for the proper management and administration of Sansio, provided that disclosures are required by law, or Sansio obtains reasonable assurances from the person to whom the PHI is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Sansio of any instances of which it is aware in which the confidentiality of the information has been breached.
- 12.13 Upon termination of this Agreement for any reason, if feasible, Sansio will return or destroy all Protected Health Information received from Customer, or created or received by Sansio on behalf of Customer. In the event that Sansio determines that returning or destroying the Protected Health Information is infeasible, Sansio will extend the protections of this Section 12 to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Sansio maintains such Protected Health Information.
- 12.14 Customer will provide Sansio with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Sansio's permitted or required uses or disclosures.
- 12.15 Customer will notify Sansio of any restrictions to the use or disclosure of PHI that Customer has agreed to in accordance with 45 C.F.R. § 164.522, to the extent such restrictions affect Sansio's permitted or required uses or disclosures.
- 12.16 Sansio will develop and maintain such policies and procedures which Sansio, in its sole discretion, determines to be necessary for the performance of its obligations under this Agreement. Sansio will train its employees in and enforce such policies and procedures as it deems appropriate. Sansio agrees to provide a copy of such policies and procedures as may relate to the services under this Agreement, to Customer from time to time upon request.

13. GENERAL.

- 13.1 **Assignment.** This Agreement is not assignable without the prior written consent of Sansio which shall not be unreasonably withheld. Any attempt by Customer to assign any of the rights, duties or obligations of this Agreement without such consent is void. After and upon approved assignment, this Agreement shall bind and inure to the benefit of the parties and their respective successors, assignees, transferees, and legal representatives.

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- 13.2 **Amendment.** This Agreement can only be modified by a written agreement duly signed by persons authorized to sign agreements on behalf of Customer and of Sansio, and variance from the terms and conditions of this Agreement in any order or other written notification from the Customer will be of no effect.
- 13.3 **Severability.** If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 13.4 **Governing Law and Venue.** This Agreement will be governed by the laws of the State of Minnesota and any action must be brought in the United States District Court for the District of Minnesota, Fifth Division, or the State of Minnesota District Court in St. Louis County, Minnesota.
- 13.5 **Schedules.** All schedules are attached hereto and incorporated by reference herein.
- 13.6 **Entire Agreement.** Customer acknowledges that its undersigned representative has read this Agreement, understands it, and agrees on behalf of Customer to be bound by its terms and conditions. Further, Customer agrees that this Agreement constitutes the complete and exclusive statement of the agreement between the parties, which supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement.

This Agreement is executed by:

| | |
|--|---|
| <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> COMPANY | Sansio |
| BY: | BY: |
| Name (Print) | Name (Print) |
| Signature Date | Signature Date |
| Title | Title |
| Address 1 | 11 East Superior Street |
| Address 2 | Suite 310 |
| City State Zip | Duluth, MN 55802 |



Prepared By: Michelle Wiklund

Schedule A

Prepared For: Sacramento Fire
 Proposal Expires: 07/31/10

| Activation/Implementation Fees | | | | |
|---|---------|------|-----|-----------|
| Description | Fee | UM | Qty | Total Fee |
| HealthEMS Activation/Implementation Fee | \$1,995 | Each | 0 | \$0 |
| Subtotal Activation/Implementation Fees | | | | \$0 |

| HealthEMS Subscription Fees (MOBILE) | | | | | | | |
|--------------------------------------|-------------|------------------------------|-----------|---------------|-------|-----|-----------|
| Description | Annual Runs | Monthly Subscription Pricing | | | UM | Qty | Total Fee |
| | | Base | Discount | Net | | | |
| Year 1 | 43,000 | \$8,887 | (\$4,981) | \$3,906 | Month | 12 | \$46,872 |
| Year 2 | 44,300 | \$9,155 | (\$5,131) | \$4,024 | Month | 12 | \$48,288 |
| Year 3 | 45,600 | \$9,424 | (\$5,282) | \$4,142 | Month | 12 | \$49,704 |
| Subtotal Subscription Fees | | | | | | | \$144,864 |
| 36 Month Avg \$\$ Per Run | | | | \$1.09 | | | |

| Interface Fees | | | | | |
|-------------------------|----------|-------|-----|-----------|-----|
| Description | Fee | UM | Qty | Total Fee | |
| Billing | Included | Month | 36 | \$0 | |
| CAD | Included | Month | 36 | \$0 | |
| EKG Data | Included | Month | 36 | \$0 | |
| State Reporting | Included | Month | 36 | \$0 | |
| Subtotal Interface Fees | | | | | \$0 |

| Professional Services - Training Fees | | | | | | |
|---------------------------------------|---------|--------|---------|------|-------|-----------|
| Description | # Staff | # Days | Fee | UM | Trips | Total Fee |
| Onsite Train-the-Trainer | 1 | 3 | \$1,656 | Day | 0 | \$0 |
| Travel Expenses (estimated) | 1 | N/A | \$1,950 | Trip | 0 | \$0 |
| Subtotal Training Fees | | | | | | \$0 |

| Professional Services - Consulting Fees | | | | | | |
|---|---------|--------|---------|------|-------|-----------|
| Description | # Staff | # Days | Fee | UM | Trips | Total Fee |
| Onsite Consulting | 1 | 3 | \$1,656 | Day | 0 | \$0 |
| Travel Expenses (estimated) | 1 | N/A | \$1,950 | Trip | 0 | \$0 |
| Subtotal Consulting Fees | | | | | | \$0 |

| Optional Service Fees | | | | | |
|--|------------|-------|-----|------------|-----|
| Description | Price/Unit | UM | Qty | Total Cost | |
| HealthEMS SanFax (minimum monthly fee is \$50) ¹⁾ | \$50.00 | Month | 0 | \$0 | |
| HealthEMS SanFax (transaction fees) ¹⁾ | \$0.05 | Page | 0 | \$0 | |
| Subtotal Optional Extension Fees | | | | | \$0 |

Note: The items above with Qty or Trips = 0 are provided for estimating purposes. Estimated travel expenses include airfare, lodging, ground transportation, and staff per diem.

¹⁾ HealthEMS SanFax will be invoiced monthly for previous month's actual use, at a \$0.05/page, minimum of \$50/month.



Prepared By: Michelle Wiklund

Schedule A

Prepared For: Sacramento Fire
 Proposal Expires: 07/31/10

Summary of Proposed System Costs

One-Time Costs

| | | |
|---|-----|-----|
| Activation/Implementation Fees | \$0 | |
| Professional Services - Training Fees | \$0 | |
| Professional Services - Consulting Fees | \$0 | \$0 |
| | \$0 | |

Subscription Fees - 36 Month Term

| | | |
|--------------------------------------|-----------|-----------|
| HealthEMS Subscription Fees (MOBILE) | \$144,864 | |
| Maintenance & Support | Included | \$0 |
| Core Classroom Training in Duluth | Included | \$0 |
| Interface Fees | Included | \$0 |
| Optional Service Fees | See Above | \$0 |
| | \$0 | \$144,864 |

Grand Total **\$144,864**

The undersigned agrees to pricing terms identified above. This Schedule A forms part of Subscription Agreement. Activation/Implementation Fees are due at signing of Schedule A.

Sacramento Fire

Sansio

 Authorized Customer Signature / Date

 Authorized Sansio Signature / Date

 Printed Name / Title

 Printed Name / Title



**SUBSCRIPTION AGREEMENT
Addendum 2**

Whereas ScanHealth, Inc., a Minnesota corporation, d/b/a/ Sansio ("Sansio") and City of Sacramento - Fire ("Customer") desire to amend the **HealthEMS® SUBSCRIPTION AGREEMENT** (the "Agreement"), this Amendment ("Addendum 2") identifies that the parties agree that the Agreement is amended as follows:

Sansio and Customer agree that Customer will be provided 36 month pricing, for three, consecutive one (1) year terms. Pricing for HealthEMS will be:

| HealthEMS Mobile Description | Annual Runs | Monthly Subscription Pricing | | | UM | Qty | Total Fee |
|-----------------------------------|-------------|------------------------------|-----------|----------------------------------|---------------|-----|------------------|
| | | Base | Discount | Net | | | |
| Year 1 7/1/10 – 6/30/11 | 43,000 | \$8,887 | (\$4,981) | \$3,906 | Month | 12 | \$46,872 |
| Year 2 7/1/11 – 6/30/12 | 44,300 | \$9,155 | (\$5,131) | \$4,024 | Month | 12 | \$46,288 |
| Year 3 7/1/12 – 6/30/13 | 45,600 | \$9,924 | (\$5,282) | \$4,142 | Month | 12 | \$49,704 |
| Subtotal Subscription Fees | | | | | | | \$144,864 |
| | | | | 36 Month Ave \$\$ Per Run | \$1.09 | | |

This Addendum 2 is executed by:

City of Sacramento - Fire

Sansio

BY:

BY:

Name (Print)

Name (Print)

Signature

Date

Signature

Date

Title

Title

Address 1

**11 East Superior Street
Suite 310
Duluth, MN 55802**

City

State

ZIP