



**NON-DISCLOSURE AND CONFIDENTIALITY  
SOFTWARE ACCESS AGREEMENT**

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BETWEEN:

**emsCharts, Inc.**

AND: \_\_\_\_\_, (the "Recipient") of

the city \_\_\_\_\_ and the state of \_\_\_\_\_.

WHEREAS, emsCharts, Inc. has established and operates a proprietary web-based computer patient charting system ("emsCharts") that allows customers to create, maintain, access, manage and report information related to emergency medical care transport and other medical services; and

WHEREAS, the Recipient desires access to emsCharts to view patient records; and

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

WHEREAS, Recipient has the right to access Protected Health Information ("PHI") for the access they are requesting; and

WHEREAS, in order to induce emsCharts, Inc. to make such Information and Material available to it, the Recipient has agreed to secure and maintain the confidentiality of all Information and Material disclosed or made available to it by emsCharts, Inc. in accordance with the terms and conditions hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the foregoing and other good and valuable consideration the Recipient covenants and agrees as follows:

1. The Recipient shall maintain and shall cause its directors, officers, employees, associates, agents and representatives as the case may be (the "Personnel") to maintain a confidential status for any and all Information and Material disclosed or made available to the Recipient at any time and from time to time by, or on behalf of emsCharts, Inc. through its officers, employees or representatives. The "Information and Material" includes, but is not limited to, emsCharts access, other computer hardware and software, samples, reports, research data, and documentation which may be supplied by emsCharts, Inc. to the Recipient for allowing access to the data covered within this agreement. The foregoing does not apply to:
  - (a) data entered by pre-hospital providers into emsCharts for patients transported to Recipient's facility (including PHI);
  - (b) information which is from time to time disclosed to the public by emsCharts, Inc.;
  - (c) information which was demonstrably known to the Recipient at the time of receipt from emsCharts, Inc.; and
  - (d) information which is lawfully obtained by the Recipient without any obligation of confidentiality from time to time from any source (other than directly or indirectly from emsCharts, Inc.) having full right of disclosure.
2. Except as expressly permitted by this Agreement or as required by law, the Recipient shall not directly or indirectly disclose or make available any of the Information or Material to any person, firm, company, entity or other party for any use whatsoever.
3. This Agreement shall not be construed so as to require emsCharts, Inc. to disclose or make available any Information and Material to the Recipient.
4. The procedures and regulations governing the disclosure and availability of the Information and Material to the Recipient and the inspection, copying, reproduction and removal thereof by the Recipient shall be established by emsCharts, Inc. and the Recipient covenants and agrees to comply with such procedures and regulations throughout. In particular and without limiting the generality of the foregoing, the Recipient shall not directly or indirectly cause or permit any Information and Material to be copied or reproduced unless and until expressly authorized in writing to do so by emsCharts, Inc.. All Information and Material copied or reproduced and any further copies, reproductions or facsimiles thereof shall be and remain the property of emsCharts, Inc.. The Recipient shall forthwith return all such Information and Material including copies and reproductions to emsCharts, Inc. upon request to do so by emsCharts, Inc..
5. Neither this Agreement nor the disclosure of or making available the Information and Material to the Recipient by emsCharts, Inc. shall confer upon the Recipient any license, interest or rights in or to the Information and Material.

6. The Recipient acknowledges that:
- (a) the Information and Material is confidential and proprietary to emsCharts, Inc.;
  - (b) emsCharts, Inc. is relying on the terms and conditions of this Agreement in disclosing and making available or causing to be disclosed and made available the Information and Material;
  - (c) emsCharts, Inc. is relying on the truth and accuracy of all representations made in this Agreement in disclosing and making available or causing to be disclosed and made available the Information and Material; and
  - (d) a breach by the Recipient of any of the terms and covenants of this Agreement or a misrepresentation or misstatement made herein would result in damage to emsCharts, Inc. and that emsCharts, Inc. could not adequately be compensated for such damage by monetary award.

Accordingly, the Recipient agrees that in the event of any such breach, misrepresentation or misstatement, in addition to all other remedies available to emsCharts, Inc. at law or in equity, emsCharts, Inc. shall be entitled as a matter of right to apply to a court of competent, equitable jurisdiction for such relief by way of restraining order, injunction, decree or otherwise as may be appropriate to ensure compliance with the terms and covenants of this Agreement.

7. The Recipient shall indemnify and hold emsCharts, Inc. harmless from all losses, damages, costs and expenses suffered by emsCharts, Inc. as a result, direct or indirect, of any misrepresentation made by the Recipient in this Agreement or as a result of any breach of the terms and covenants of this Agreement by the Recipient.
8. No variation or modification of this Agreement nor waiver of the terms and covenants of this Agreement shall be valid unless made in writing and signed by the parties.
9. The Recipient acknowledges that no failure by emsCharts, Inc. to enforce at any time any of the terms and covenants of this Agreement to be performed by the Recipient shall operate as a waiver thereof or prejudice the rights of emsCharts, Inc. in the event that any further default or breach of such terms or covenant occurs.

10. The Recipient acknowledges and agrees that should it after or during the course of its review of the Information and Material put forth to emsCharts, Inc. any proposals or ideas in connection with emsCharts access, emsCharts, Inc. may use any material or ideas contained therein or derived or developed therefrom and the Recipient further acknowledges and agrees that it shall have and be deemed to have no proprietary interest in and to such material and ideas.
11. The Recipient agrees that all the terms and covenants of this Agreement are necessary and fundamental to the protection of emsCharts access and are reasonable and valid, and all defenses to the strict enforcement thereof by emsCharts, Inc. are hereby waived by the Recipient.
12. The Recipient shall ensure and take all possible actions and exact all necessary obligations to obtain and maintain the strict observance of all the terms and covenants of this Agreement by the Personnel.
13. This Agreement shall remain in force for the life of the emsCharts product or until superceded by a revised agreement.
14. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.
15. If any term or covenant of this Agreement is wholly or partially invalid or unenforceable, such term or covenant shall be severable and this Agreement shall be interpreted as if the invalid or unenforceable term or covenant had not been a part hereof.
16. This Agreement embodies all of the understandings concerning the subject matter hereof and merges all prior discussions and writings between emsCharts, Inc. and the Recipient as to the subject matter hereof.
17. The Recipient shall not assign this Agreement and the benefit thereof.
18. This Agreement shall be binding upon and enure to the benefit of emsCharts, Inc. and its successors and assigns and shall be binding upon the Recipient and its successors.

### **Protected Health Information**

19. Recipient shall be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted by emsCharts in accordance with the standards and requirements of HIPAA.
20. Recipient shall be responsible to do whatever is necessary to deny further access to PHI by any user who or that no longer should be entitled or authorized to access PHI. emsCharts, Inc. shall be available, upon request, to help Recipient to limit PHI access within emsCharts only to authorized users.

21. Recipient shall notify emsCharts, Inc. of any restriction to the use or disclosure of PHI that Recipient has agreed to in accordance with 45 CFR §164.522 to the extent that such restriction may affect emsCharts, Inc.'s use, storage, or disclosure of PHI.
22. Recipient shall notify emsCharts, Inc. of any unauthorized use or disclosure of PHI that Recipient is aware of pursuant to allowable uses and disclosures described in HIPAA, with respect to emsCharts or the covered entity who entered the PHI into emsCharts.

IN WITNESS WHEREOF the Recipient has executed this Agreement as of the day and year first above written.

**emsCharts, Inc.**

**Authorized Signatory:**

**Peter Goutmann**

**Title:**

**President**

**Signature:**

\_\_\_\_\_

**Hospital:**

\_\_\_\_\_

**Address:**

\_\_\_\_\_

\_\_\_\_\_

**Phone #:**

\_\_\_\_\_

**HIPAA Compliant Fax #:**

\_\_\_\_\_

**Authorized Signatory:**

\_\_\_\_\_

**Name:**

\_\_\_\_\_

**Title:**

\_\_\_\_\_

Hospitals must have at least two users on their account. Initial login instructions as well as occasional important security reviews will be emailed to these designated users. Once set up, access for additional users can be granted by these initial two (2) users.

Named User 1 (first, last name):

\_\_\_\_\_

User 1 email:

\_\_\_\_\_

Named User 2 (first, last name):

\_\_\_\_\_

User 2 email:

\_\_\_\_\_

Please return this form to:

emsCharts, Inc.

125 Warrendale Bayne Road, STE 100

Warrendale, PA 15086

Fax: 724-933-9333

sales@emscharts.com