This UKG Pro Managed Payroll Services Agreement (“Agreement”) is effective the latter of the dates signed and is between **HRMS Solutions, Inc.**, a Colorado corporation with a business address at 941 Grant Place, Boulder, CO 80302 hereinafter referred to as (“HRMS”), and **Emergency Medical Services Authority, Inc.,** an Oklahoma public trust with a business address at 1417 North Lansing Ave, Tulsa, Oklahoma, 74016 hereinafter referred to as (“EMSA”).

The purpose of this Agreement is to define the UKG Pro Managed Payroll Services (“UMPS”) to be delivered and provided by HRMS to EMSA. This Agreement is defined in specific terms and is intended to cover a specific scope of work as defined herein.

The Agreement is organized into the following sections:

1. Our Understanding
2. Definitions
3. HRMS Employee Assumptions
4. Service Assumptions
5. Description of UKG Pro Managed Payroll Services
6. Service Fees and Payment Schedule
7. Travel Expenses and Reimbursements
8. Engagement Acceptance

Appendix A – Service Level Agreement

Appendix B – Services Rates & Out of Scope Work

Appendix C – Terms and Conditions

###### **I. Our Understanding**

The primary objective of these Services is to provide UKG Payroll staff augmentation and payroll administration expertise, support and backup to EMSA. The Commencement Date for these Services begins on October 1, 2022 continuing for an “Initial Term” of (12) six months.

It’s our understanding that EMSA has approximately six hundred and fifty-five (655) compensated employees which will be paid (26) times in a calendar year. There is also a possibility of one (1) off-cycle payroll per quarter for incentives, holiday and/or bonuses.

###### **II. Definitions**

 **Effective Date** – The date the agreement is executed by both parties.

 **Commencment Date** – The date the Initial Term and Services begins.

 **Initial Term** – The subscription time period of this agreement.

 **Renewal Date** - Conclusion of the Initial Term of Services plus 1-day.

 **Compensated Employees** – Person receiving a check, advice of deposit or otherwise compensated by EMSA using UKG Pro Payroll.

 **PEPM** – Per Employee Per Month.

###### **III. HRMS Employee Assumptions**

* HRMS will assign a dedicated and experienced UKG Pro Payroll Consultant with sufficient oversight as may be needed by EMSA to process payrolls during the term of this Agreement.
* The assigned HRMS Payroll Consultant’s responsibility will be to service and support EMSA’s payrolls over the course of six months.
* Hours of availability for support are 9am – 5pm CST Monday - Friday

###### **IV. Service Assumptions**

 HRMS and EMSA agree that:

* EMSA is required to participate in all decision-making meetings and required deliverables.
* HRMS shall perform the Services in a professional and workmanlike manner with all diligence and in accordance with all industry standards and applicable laws, statutes, regulations and ordinances.
* HRMS will assign a primary point of contact to manage all Payroll needs.
* HRMS will assign a Payroll Consultant to address payroll related items.
* EMSA will provide appropriate UKG Pro login access to HRMS.
* HRMS may work with UKG resources to achieve EMSA’s desired results.
* A task/project-planning meeting will be conducted with the EMSA project team members to identify the scope and timing of HRMS’ involvement.
* All Services will be performed remotely.
* EMSA agrees to provide reasonable access to its key personnel necessary for HRMS to provide the Services.
* If EMSA requests HRMS resources onsite, EMSA agrees to provide HRMS personnel a safe workplace consistent with that of its own employees.
* Onsite visit(s) require a 21-day advanced notice and appropriate COVID safety protocols.
* HRMS personnel will observe all safety and other applicable rules in effect at EMSA’s workplace, provided that reasonable notice of the rules has been supplied to HRMS and such person.
* Travel expenses are not included and must be pre-approved in writing by EMSA.

###### **V. Description of UKG Pro Managed Payroll Services**

# As part of our formal process to help EMSA migrate to our UKG Pro Managed Payroll Services, HRMS will provide the following Transitional Services:

* Formally introduce the teams via “Welcome Call”, tools used to manage the project, and discuss Timeline
* Begin the Onboarding process by discussing dates and times in which the assigned HRMS Payroll Consultant will be shadowing and verifying the existing payroll process
* Payroll testing – Assist the HRMS team through multiple payroll tests

# A description of UMPS to be performed by HRMS including the following payroll-related processes and administrative functions on behalf of EMSA:

* Post Payroll Documentation – A processing schedule checklist will be provided post payroll to document the activities and issues for each payroll.
* Pre-Processing Audit – Preprocess payroll with established audits to ensure the accuracy of the inputs and generate the appropriate approvals as required
* Import UKG Pro Time to UKG Pro Payroll
* Gross-to-Net Processing –- Processing of 655 employees gross-to-net payroll
* Print and/or Distribute – Print and deliver defined payroll related documents to designated locations as instructed by EMSA.
* Payroll Tax Filing Support – Act in liaison fashion and assist in the support of payroll tax data related items including oversight for active cases with UKG Pro payroll processing via UKG Pro Payment Services.
* Direct Deposit / ACH – Facilitate the appropriate generation of direct deposit (ACH) processing with EMSA’s banking partner based on the current/ Live EMSA banking procedures.
* Garnishment Processing – Set-up and manage wage attachments with the UKG Pro platform while supporting the coordination of payments via UKG Pro Payment Service
* Compliance Reporting - Process Federal, State and local compliance reporting with the UKG Pro platform.
* Payroll Standard Reporting – Manage and maintain reporting requirements with UKG Pro to support the payroll function.
* Quarterly Process Assessment – Based on the calendar, an assessment of the process, activities and effectiveness of the resource will occur between HRMS and EMSA. Mutually agreed upon adjustments will be implemented within the scope of these Services.
* U.S. Year-End Management – Provide oversight and management of year-end activities and reporting including 1094, 1095’s, W-2’s, 940, 941’s and Quarterly State returns.
* General Payroll Support – Participate and provide payroll feedback to the EMSA team regarding common practices related to payroll processing, UKG payroll setup and administration.

# The following is a list of UPMS NOT included:

* Time Card Loading and Balancing – EMSA has the responsibility to provide approved hours and earnings. Once approved, HRMS will coordinate with EMSA team to load approved time cards and records through the established approval processes.
* Payroll Compliance and/or Legal Recommendations
* Global Payroll Processing
* Union Employee Relations
* Employee Benefit or Human Resources Relations
* U.S. Tax Compliance and Filing – To be delivered by UKG Tax Payment Services
* Business Intelligence Reports and Dashboards (available for additional fees)
* Configuration (i.e. change in configuration or new functionality)
* Customization (handled exclusively by UKG Professional Services)
* Integrations and/or Technical Services (To be provided by UKG or EMSA)
* Applying or Testing System Upgrades and/or additional features
* Assistance with Mergers and Acquisitions, Divestitures and Company Transfers

**Service Assumptions:**

* UKG Pro Software and Tax Payment Services have been purchased.
* EMSA is required to provide the resources and detail initially for HRMS to understand requirements and desired outcomes.
* EMSA is required to review and approve all payrolls prior to posting to ensure accuracy
* EMSA will be responsible for final verification of each payroll.
* EMSA will provide HRMS with administrative access to UKG Pro.
* HRMS will not provide any legal advice related to EMSA employees, compliance, unions or payroll adminstration.
* EMSA is required to participate in all decision making and required meetings.
* HRMS will not make decisions on behalf of EMSA without the expressed authorization of the appropriate EMSA representative.
* Multiple resources may engage in the initial meeting to ensure proper backup for EMSA payroll needs.
* EMSA and HRMS will agree on a payroll processing scheduling. Should the process adjust or be optimized throughout the initial subscription term based on the quarterly assessments, HRMS and EMSA may agree to realign the Services and Fees prior to renewal.
* HRMS may support after hour or holiday payroll processing schedules based on pre-approved request and agreement by both parties.
* HRMS will process all bonus payrolls by importing a pre-calculated spreadsheet.
* HRMS will provide support for employees who inquire about any of the following:
* Paycheck
* Resetting of Employee Password for UKG Self-Service
* Adding and maintaining earning, taxes and deductions
* Running and delivering UKG standard reports (this does not include the building of new BI Reports or Dashboards.
* HRMS will not be responsible for any pre-existing errors or similar matters arising prior to commencement of Services.
* HRMS will advise EMSA in writing when any potential legal payroll and /or benefit will change.

**VI. Service Fees and Payment Schedule**

The UMPS will be provided on a fixed fee basis pursuant to the following:



The renewed subscription fee for these UMPS is $7,800 per month for up to 700 compensated employees. Compensated employees are persons receiving a check, advice of deposit or otherwise compensated by EMSA in UKG Pro.

Upon agreement execution, HRMS will invoice EMSA for the first month’s subscription fees for Services beginning October 2022 of $7,800. The total 12-month subscription fee for 700 compensated employees will be $93,600.

The subscription fee of $7,800 per month is based on 700 compensated U.S. employees. Any compensated employees above 700 will be billed a flat rate of $9.00 PEPM (Per Employee Per Month). Over the course of the subscription, HRMS will review the actual number of compensated employees to determine if more than 700 employees were compensated in that given month. For example, if the total compensated employees in August 2023 is 800, based on an additional 100 compensated employees (800– 700 = 100) at a cost of $9.00 PEPM, an additional subscription fee ($9.00 x 100 employees = $900 will be applied. This fee will be invoiced at the end of that same month due net (30). In this example, EMSA would receive (2) invoices in Aug 2023, the monthly fee of $7,800 at the beginning of the month and the additional compensated employee fee of $900 at the end of the month.

After the expiration of the initial term period of 12-months, the Parties may agree to renew this Agreement on a annual or month-to-month basis at the rate of $8,000 per month unless EMSA has notified HRMS, in writing, of its intention to renew or terminate the agreement, no later than (30) days prior to the end of the then-current term.

Payment terms for all Service invoices are due net (30). Each subsequent month’s service will be invoiced at $7,800 on the first of the month (i.e. 2nd subscription payment will be invoiced October 1, 2022 for October 2022 Services). Oklahoma sales tax is not included in the fees, but will be added to the invoices if applicable.

EMSA agrees to submit payments via ACH based on bank instructions are listed below:

Flatirons Bank

1095 Canyon Blvd, Ste 100

Boulder, CO 80302

Beneficiary Name: HRMS Solutions, Inc.

\*Bank Account and Routing numbers will be provided after Agreement is executed

###### **VII. Travel Expenses and Reimbursements**

EMSA shall be responsible for all pre-approved, written travel expenses. Services do not include any out-of-pocket expenses for items such as, airfare, train, hotel accommodation, car rental, taxi fares, Uber and other share ride fares, parking, and a per diem meal allowance for engagements outside our employees’ home city in an amount in accordance with IRS publication 1542. EMSA shall only reimburse HRMS for out‑of‑pocket expenses (i) actually incurred by HRMS in performance of the Services; (ii) pre-approved by EMSA; and (iii) that are evidenced and substantiated by valid receipts.

###### **VIII. Engagement Acceptance**

BY EXECUTING THIS AGREEMENT, HRMS and EMSA, THROUGH THEIR AUTHORIZED REPRESENTATIVES IDENTIFIED BELOW, AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT

|  |  |
| --- | --- |
| **Emergency Medical Services Authority** | **HRMS Solutions, Inc.** |
| By: | By:  |
|
| Print Name:  | Print Name:  |
| Title:  | Title:  |
| Date: | Date: |

APPENDIX A

**SERVICE LEVEL AGREEMENT (SLA)**

The resulting data and accuracy score of the SLA is used as a reference point for measuring, interpreting and drawing conclusions about UMPS on-going service performance. A total of two factors will be measured.

1. **Payroll Accuracy** – Defined as the accuracy of employees net paycheck amount
2. **Payroll Timeliness** – Defined as the timely delivery of employee paychecks, direct deposit advances on pay date in accordance with the agreed upon payroll processing schedule.

**Fees at Risk**

* Service level failure is based on the roll-up of the three months’ results for each given quarter.
* Service level failure credits are limited to the UMPS subscription fees for the specific functional areas of Payroll Accuracy and Payroll Timeleness
* Service level failure credits are not to exceed 5% in aggregate of quarterly UMPS subscription fees. (For example $18,000 x .05 = $900.00)
* Service level credits shall not apply and shall not be payable during the first 90-days following the launch of UMPS.)
* EMSA has 30-days from closing of each month to review/question reported payroll accuracy and timeliness numbers in order to determine any potential fees at risk and service level failure credits.
* If EMSA does not submit timely or accurate data based on the agreed timelines, SLA calculations are not counted toward Fees at Risk and service level failure credits.

**Service Level Failure Credit Measurement Approach**

Payroll Accuracy is calculated as follows:

A = the number of paychecks issued within the quarter based on check date including regular, ACH, manual checks, and off-cycle runs (example: 3,000)

B = the number of identified errors to net pay caused by HRMS (example: 30)

Payroll Accuracy Formula: ((A-B)/A)\*100

Example: ((3,000-30)/3,000)\*100 = 99%

 Measurement Period = Quarterly

Payroll Timeliness is calculated as follows:

A = the number of paychecks issues within the quarter based on check date including regular, ACH, manual checks, and off-cycle runs (example: 3,000)

B = the number of paychecks delivered after the check date including regular, ACH, manual checks and off-cycle runs (delivery or banking issues identified as within HRMS control). (example: 50)

Payroll Timeliness Formula: ((A-B)/A)\*100

Example: ((3000-50)/3000)\*100 = 98.3%

A case is logged to track all reported Payroll Timeliness issues. Research is completed to determine the root cause. Items identified as late due to HRMS missing processing deadline will be counted as an error. Any identified Payroll Timeliness error caused by HRMS will be included in the calculation within the measurement period identified.

 Measurement Period = Quarterly (based on monthly monitoring)

APPENDIX B

**SERVICES RATES & OUT OF SCOPE WORK**

Any Services outside the scope of the subscription fees identified in Sections V. (Description of UKG Pro Managed Payroll Services) will be billed at a rate of $210 per hour. The hourly rate shall be billed in fifteen-minute increments. HRMS shall keep a contemporaneous timesheet record of hours worked, detailing who performed which service and for what period the service was performed. The timesheet will be presented to EMSA for review upon request.

HRMS agrees to consider offers from EMSA to provide Services in accordance with the terms of this Agreement in addition to those outlined in Sections III. EMSA shall submit a request for the desired Services to HRMS and if HRMS desires to perform such Services, HRMS shall provide EMSA with a written Work Order and pricing for such Services in a format acceptable to EMSA ("Statement"). Should such quote meet with the approval of EMSA, EMSA may accept the written Work Order from HRMS, which shall authorize HRMS to commence Services. Notwithstanding anything herein to the contrary, EMSA shall not be liable for any fees charged for additional work without the advance, written approval of EMSA for such fees. EMSA, at its sole discretion, may modify, reject, cancel, or stop any and all Work Orders, plans, schedules, and/or work in progress; provided, however, that EMSA agrees to pay all costs incurred by HRMS for work satisfactorily performed prior to the cancellation of an approved Work Order. HRMS shall not perform any Services not authorized by a Work Order. All Work Orders shall be subject to the terms and conditions of this Agreement.

APPENDIX C

**TERMS AND CONDITIONS**

**1. Payment Terms.** EMSAshall pay to HRMS the undisputed portion of any fees as set forth in the Agreement. All disputes regarding invoices must be raised within twenty (20) days of receipt. Invoices not disputed prior to payment thereof shall be deemed accepted and shall not be subject to later objections. Undisputed amounts not paid by the due date, shall accrue interest at the rate of 1.5% per month, from the date due until the date paid.

 EMSA will receive (4) types of billing documents from HRMS Accounting:

* Invoice for Initial Onboarding Fee.
* Invoices for Subscription Services.
* Invoice(s) for travel related time and/or expenses. This invoice will be generated weekly as charged and include expense receipts.
* Customer Statement with summary of invoices and payments. This statement will be generated upon request only.

EMSA may withhold payment of specific charges within a given invoice that it in good faith disputes or for which it may require additional information from HRMS to verify the amounts being charged, provided that EMSA delivers to HRMS a written statement on or before the date in which such payment is due, describing in reasonable detail (i) the specific charge or charges being disputed and the basis of the dispute; and (ii) if applicable, the supporting documentation that is reasonably required for verification of the charge or charges.

**2. Warranties**. HRMS represents and warrants that it has full power and authority to enter into the Agreement and perform the Services contemplated therein. HRMS further represents and warrants that (i) all Services will be performed in a professional and workmanlike manner in accordance with the applicable professional standard of care by qualified personnel who are properly trained and supervised to perform the work; (ii) it uses and will continue to use industry standard methods to detect and delete viruses, backdoors and other malware from any deliverables provided to EMSA and from its own IT resources that interact with EMSA’s IT infrastructure; (iii) it will not incorporate any third party intellectual property, including any intellectual property that is the subject of an open license, into any deliverable to EMSA without EMSA’s written consent. The warranty in Section 2 shall be valid for (30) days from completion of the Services. EACH PARTY DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH REPECT TO THE SERVICES. Nothing herein shall be construed to limit any warranty rights of EMSA provided by UKG, Inc. with the UKG Pro application nor be construed to make HRMS a guarantor, joint venturer, partner, principal or co-warrantor with UKG Pro. UKG, Inc. is an independent, privately-held, multi-national enterprise software company headquartered in Weston, Florida.

**3.** **Confidentiality.** Due to the nature of the Services to be performed pursuant to this Agreement, each party may receive (the “Receiving Party”) from the other party (the “Disclosing Party”) Confidential Information. For purposes of this Agreement, "Confidential Information" means the Disclosing Party’s nonpublic information including, without limitation, financial, technical, partnering, marketing, sales, product development, contractual and employee information that is not made publicly available by the Disclosing Party, as well as all information protected by applicable laws intended to protect individual privacy, either as Personally Identifiable Information (PII), Personal Health Information (PHI) or otherwise, that is either: (i) so designated using that term “confidential” or an equivalent, or (ii) that the Receiving Party should reasonably have understood to be confidential given the nature of the information disclosed.

The Receiving Party will not use the Confidential Information for any purpose other than performance of its obligations under this Agreement. The Receiving Party will not disclose the Confidential Information to any third party, other than its employees who require access to the Confidential Information to perform the Services and who are subject to obligations of confidentiality at least as protective as those in this Agreement. The Receiving Party will use reasonable commercial efforts to protect the Confidential Information, such efforts to be at least equivalent to those it uses to protect its own confidential and proprietary information of a similar nature and in all cases at least as protective as may be required by law. HRMS will not access any EMSA employee data for any purpose other than the performance of the Services and shall not store or permit such information to be stored outside of EMSA’s IT infrastructure without EMSA’s written consent.

The Receiving Party (i) will not use the Confidential Information to circumvent the Disclosing Party with regards to any third-party relationships that it may currently have in place; (ii) will not use, reproduce, modify or disclose any of the Confidential Information for any purpose other than in pursuance of its obligations under this Agreement and then only in strict compliance with the provisions hereof and subject to any applicable laws; (iii) agrees to promptly notify the Disclosing Party in writing of any damages, misappropriation or unauthorized use, disclosure or duplication of the Confidential Information, including a detailed description of the circumstances of the disclosure and the identity of the parties involved; and (iv) will cooperate in a commercially reasonable manner with the Disclosing Party to obtain the return of such Confidential Information.

The Receiving Party may disclose the Confidential Information where required pursuant to a legal process (*e.g.*, subpoena, interrogatories or similar legal process) or by law, provided that in such instance the Receiving Party, to the extent legally permissible, will use best efforts to provide advance written notice of such event to the Disclosing Party and to reasonably cooperate with the Disclosing Party so that the Disclosing Party may seek an appropriate protective order or waive compliance by the Receiving Party with the provisions of this Agreement, or both. If, absent the entry of a protective order or receipt of a waiver, the Receiving Party is, in the reasonable opinion of its legal counsel, legally compelled to disclose such Confidential Information, the Receiving Party may disclose such Confidential Information to the extent required without liability under this Agreement, provided that the Receiving Party uses its best efforts to obtain confidential treatment for any Confidential Information so disclosed. The Receiving Party also may disclose the existence and summary of this Agreement in regulatory filings if required by law.

The Receiving Party acknowledges and agrees that the Disclosing Party provides the Confidential Information “AS-IS” without any other warranty of any kind, and the Receiving Party agrees that in no event will the Disclosing Party or its representatives be liable for errors, omissions, inaccuracies or damages of any kind arising from or relating to the Receiving Party’s use of or inability to use same. Both parties must adhere to all applicable laws relating to the export of technical data, and will not export or re-export any technical data, any products received from a Disclosing Party, or the direct product of such technical data to any proscribed country or third party under such applicable laws.

The Receiving Party acknowledges that any use or disclosure of the Confidential information in a manner inconsistent with the provisions of the Agreement may cause the Disclosing Party irreparable damage for which remedies other than injunctive relief may be inadequate, and the Receiving Party agrees that the Disclosing Party shall be entitled to injunctive or other equitable relief restraining such use or disclosure, in addition to such damages and other relief to which the Disclosing Party may be entitled by law.

The terms and provisions of this Section 3 shall survive the expiration or earlier termination of the Agreement for a period of 5 years; provided, however, that with respect to employee data and PII, the terms and provisions of this Section 3 will remain in full force and effect in perpetuity.

In order to perform the Services, HRMS will require access to certain Confidential Information of EMSA, including personnel records. It is the intent of the parties that such records shall remain at EMSA’s facilities and within EMSA’s information technology infrastructure. Accordingly, HRMS will not remove copies of EMSA’s Confidential Information from EMSA’s facility, either physically or through electronic means such as email. Upon request, EMSA will provide HRMS with computing equipment for use at EMSA’s facility and/or upon agreement as to terms, with controlled file transfer access to EMSA’s Confidential Information.

**4.** **Intellectual Property Rights.** In the course of this engagement, HRMS may use enhancements, discoveries, processes, methods, designs, and know-how, whether or not copyrightable or patentable, which HRMS conceived during the course of other consulting engagements, and EMSA shall not thereby acquire any ownership or other rights therein other than as provided in Section 4. In addition, HRMS may independently develop enhancements, processes, methods, designs, or know-how during the term of this Agreement and EMSA acknowledges that HRMS may use such enhancements, processes, methods, designs, and know-how in its business operations with other customers, free of any rights or claims by EMSA provided that HRMS does not use or disclose any Confidential information of EMSA. Upon payment for the Services, HRMS hereby grants to EMSA a fully paid up, worldwide, transferrable, non-exclusive, perpetual license to use any intellectual property owned by or licensed to HRMS that is embodied in, or contemplated to be used in connection with, any deliverables provided to EMSA under this Agreement, all solely as reasonably required to use such deliverables for their intended purpose.

**5. Term and Termination.** The term of the Agreement shall commence on the Commencement Datehereof and, unless earlier terminated as provided below, shall continue through the date upon which HRMS completes the Services as required herein.

 Termination for Breach - In the event of any breach of any term or provision of this Agreement by either party, the other party may cancel the Agreement by giving fifteen (15) day prior written notice thereof; provided, however, that the Agreement shall not terminate at the end of the fifteen (15) day notice period if the party in breach has cured the breach to the satisfaction of the other party prior to the expiration of the fifteen (15) day period. In any such case, EMSA shall be responsible for payment of all Services satisfactorily rendered prior to the date of termination.

 Termination for Convenience – In the event of termination for convenience (early termination), EMSA may terminate this agreement by serving written notice of its intention with thirty (30) day notice. HRMS shall be entitled to compensation of either 3-months or 50% of the remaining Agreement value which is ever greater which will be due net (30).

 Any work performed after termination notice must be pre-approved in writing. HRMS may immediately suspend performance under this Agreement upon written notice to EMSA if any undisputed Service invoice(s) is unpaid for a period greater than (30) days following its due date and may terminate this Agreement thereafter if such failure to pay is not cured.

**6. Limitation of Liability.** EXCEPT IN THE CASE OF BREACH OF THE CONFIDENTIALITY PROVISIONS SET FORTH IN SECTION 3, OR CLAIMS REQUIRED TO BE INDEMNIFIED PURSUANT TO SECTION 8, OR A PARTY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, EACH PARTY’S ENTIRE LIABILITY IN CONNECTION WITH THIS AGREEMENT FOR ANY LOSS OR DAMAGE RESULTING FROM ANY BREACH BY SUCH PARTY OF THE AGREEMENT OR ANY PERFORMANCE OF OR FAILURE TO PERFORM THE SERVICES OR ANY OBLIGATION HEREUNDER (INCLUDING BY ANY PARTNER, EMPLOYEE, CONTRACTOR, OR AGENT OF A PARTY) OR ANY FAILURE OF ANY FEATURE OF THE DEVELOPED SOFTWARE SHALL NOT EXCEED FIVE (5) TIMES THE FEES PAID TO HRMS FOR THE SERVICES UNDER THE AGREEMENT, NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

 **7. No Liability for Consequential Damages.** EXCEPT IN THE CASE OF BREACH OF THE CONFIDENTIALITY PROVISIONS SET FORTH IN SECTION 3, OR CLAIMS REQUIRED TO BE INDEMNIFIED PURSUANT TO SECTION 8, OR A PARTY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF THE AGREEMENT OR THE PERFORMANCE OR FAILURE TO PERFORM SERVICES OR ANY OBLIGATION HEREUNDER, OR FOR ACTS OF NEGLIGENCE THAT ARE NOT RECKLESS OR INTENTIONAL IN NATURE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

**8. Indemnification.** HRMS shall defend, indemnify and hold harmless EMSA, its partners, and its agents and employees representatives, officers, directors, stockholders, members, managers, and parent, subsidiary and affiliated companies (the “Indemnified Parties”) from and against all claims, liabilities, suits, losses, damages and expenses, including costs and reasonable attorney's fees (collectively, “Claims”), relating to or resulting from (i.) any actual or alleged infringement or misappropriation of any patent, copyright, trademark, trade secret, or other proprietary right by HRMS, including infringement resulting from modification of any UKG Pro software code by HRMS for the benefit of EMSA; (ii.) acts or omissions of HRMS personnel or the presence of HRMS personnel at a EMSA facility (except Claims resulting solely from the negligence or willful misconduct of EMSA), including without limitation Claims resulting from injuries to HRMS personnel and Claims resulting from injuries, or damage to any property of whatsoever kind or nature or as a result of the loss or corruption of data, any improper use or disclosure of Personally Identifiable Information, Personal Health Information (as defined under applicable law), or Confidential Information, or any fines or penalties arising out of or in any manner connected with the services provided for the Indemnified Parties (including, but not limited to, services provided under this Agreement or any such other services provided for or on behalf of the Indemnified Parties) even for, and if caused in whole or in part by, any act, omission, negligence, or strict liability of the Indemnified Parties (iii.) HRMS’ failure to comply with all laws and regulations applicable to its provision of the services contemplated by this Agreement, or failure to obtain and maintain all licenses, permits and approvals necessary for it to provide Services; (iv.) HRMS’ breach of or failure to perform under this Agreement, including without limitation HRMS’ breach of any of its representations, warranties or covenants set forth in this Agreement; or (v.) HRMS’ failure to perform obligations arising from its employment relationship with HRMS personnel, including without limitation any Claims by HRMS personnel for wages or for benefits under any EMSA benefit plan and Claims by a taxing authority for withholding, unemployment or other taxes for interest or penalties thereon or for any alleged failure to withhold taxes or make payments. HRMS shall have the right to exercise reasonable control over any litigation within the scope of this indemnity; provided, however, that the Indemnified Parties shall have the right to participate in any such litigation insofar as it concerns Claims against them. All Indemnified Parties shall cooperate to the extent necessary in the defense of any Claim within the scope of this indemnity. HRMS may not enter into any settlement agreement of any matter within the scope of this Section 8 that includes an assertion of wrongdoing by EMSA without EMSA’s written consent. The parties agree that the provisions of this Section 8 shall survive beyond the term of this Agreement.

**9. Insurance.** HRMS shall maintain throughout the term of this Agreement (i.) Comprehensive General Liability Insurance including premises and operations liability, with limits of no less than $1,000,000 per occurrence for bodily injury, including personal injury, and property damage; with a combined aggregate of $2,000,000; (ii.) Errors and Omissions liability and Contractors Protective Liability Insurance with a per claim/aggregate limit of no less than $5,000,000; and (iii.) Automobile Liability with a combined single limit of $1,000,000; (iv.) Umbrella Liability Insurance with a $4,000,000 per claim/aggregate limit/$10,000 retention; (v.) Statutory Worker's Compensation Insurance meeting all state and local requirements; and (vi.) the following Crime Liability Insurance (a.) Employee Theft $1,000,000 limit/$5,000 retention, (b.) ERISA Fidelity $1,000,000 limit, (c.) Forgery or Alteration $1,000,000 limit/$5,000 retention, (d.) On Premises $1,000,000 limit/$5,000 retention, (e.) In Transit $1,000,000 limit/$5,000 retention, (f.) Money Orders and Counterfeit Money $1,000,000 limit/$5,000 retention, (g.) Computer Fraud $1,000,000 limit/$5,000 retention, (h.) Computer Program and Electronic Data Restoration Expense $1,000,000 limit/$5,000 retention, (i.) Funds Transfer Fraud $1,000,000 limit/$5,000 retention, (j.) Personal Accounts Forgery or Alteration $1,000,000 limit/$5,000 retention, (k.) Identity Fraud Expense Reimbursement $25,000 limit/ no retention, (l.) Claim Expense $25,000 limit/no retention. (vii.) Cyber Liability Insurance with a $5,000,000 per claim/aggregate limit covering losses caused by information Security and Privacy Liability that arise from the operations described under the scope of services of this agreement including while data is in transit or in the possession of Third Parties hired by HRMS (such as data back-up services). The insurance coverage is primary coverage without right of contribution from any other EMSA insurance. Insurance maintained by EMSA is for the exclusive benefit of EMSA and will not inure to the benefit of HRMS. In addition, EMSA shall be included as an Additional Insured for liability arising out of HRMS’s acts or omissions, loss of, damage to or destruction of electronic data provided to HRMS by EMSA; or its employees arising from malicious code, viruses, worms or malware; privacy notification expense coverage (including credit monitoring expense) – sublimit $1,000,000. HRMS will provide EMSA a COI (Certificate of Insurance) after execution of the agreement and annually or at anytime upon request.

**10. Independent Contractor.** HRMS is an independent contractor. Neither HRMS nor EMSA is, or shall be deemed for any purpose to be, an employee or agent of the other and neither party shall have the power or authority to bind the other party to any contract or obligation. HRMS shall retain the right to perform work for others during the term of the consulting engagement.

**11**. **Governing Law and Survival.** This Agreement shall be governed by and construed in accordance with the State laws of Oklahoma. The provisions of Sections 2, 3, 6 through 16 shall survive the termination or expiration of this Agreement.

**12**. **Entire Agreement;** **Modifications.** Each party acknowledges that it has read the Agreement and the Appendices attached thereto, and further agrees that the Agreement and the Appendices thereto are the complete and exclusive statement of the parties and supersede and merge all prior proposals, understandings, and Agreements, oral or written, between the parties relating to the subject matter hereof, including, without limitation, the terms of any customer request for proposal or the standard printed terms on any EMSA purchase order. No modification, amendment, supplement to, or waiver of the Agreement or any Appendix hereunder shall be binding upon the parties to be charged therewith unless made in writing and duly signed by both parties.

**13**. **Severability.** In the event any one or more of the provisions of this Agreement or of any Appendix is held to be invalid or otherwise unenforceable, the enforceability of the remaining provisions shall be unimpaired.

**14**. **Dispute Resolution.** Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to mandatory discuss and mediate, shall be determined by arbitration in Dallas, Texas before a single arbitrator. The arbitration shall be administered by JAMS (Judicial Arbitration and Mediation Services) pursuant to JAMS’ Streamlined Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The parties shall maintain the confidential nature of the arbitration proceeding and the Award, including the Hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an Award or its enforcement, or unless otherwise required by law or judicial decision.  Each party shall bear its internal expenses and its attorney’s fees and expenses, and jointly share the cost of the arbitration. The decision of the arbitrator shall be final and binding on the parties.

**15.** **Mutual Non-Solicitation.** To the extent permitted by applicable law, during the term of this Agreement and for a period of one (1) year after the termination of this Agreement, each party agrees that it shall not knowingly solicit or attempt to solicit any of the other party's employees who are key to such party’s performance of its obligations under this Agreement. Notwithstanding the foregoing, nothing herein shall prevent either party from hiring as an employee any person who responds to an advertisement for employment placed in the ordinary course of business by that party and/or who initiates contact with that party without any direct solicitation of that person by that party or any agent of that party. The parties agree that a breach of this provision results in a placement fee of 50% of the employee’s anticipated first year compensation will be payable to the non-breaching party no later than (30) days after the date of hire.

**16. Force Majeure.** HRMS or EMSA shall not be responsible for failure to perform in a timely manner under this Agreement when its failure results from any of the following causes: Acts of God or public enemies, civil war, insurrection or riot, fire, flood, explosion, earthquake or serious accident, strike, labor trouble or work interruption, or any cause beyond its reasonable control.

**17. Waiver.** A failure or delay of either party to this Agreement to enforce at any
time any of the provisions of this Agreement, or to exercise any option which is herein provided, or to require at any time performance of any of the provisions hereof, shall in no way be construed to be a waiver of such provision of this Agreement or shall not excuse the other party's performance of such, nor affect any rights at a later time to enforce the provision.

**18. Notices.** Any notice or other communication required or permitted to be given by either party to the other shall be in writing and shall be deemed to have been duly given on the day of service if transmitted by any receipted means and addressed to the respective parties at their principal place of business or at such other addresses as may be specified by either party.

**19. No Assignment.** Neither this Agreement nor any interest in this Agreement, including any interest in the Project, may be assigned or transferred by either party without the prior written authorization of the other party. Violation of this Section shall constitute a material violation of this Agreement.

**20.** **Display/ Promotion.** The parties will discuss EMSAS use of the purchase of UKG Pro Managed Payroll Services for advertising, website dispay, and press release promotion.

**21. Headings**. Headings used in this Agreement are for reference purposes only and shall not be deemed as part of this Agreement.