

AGREEMENT

THIS AGREEMENT dated this \_\_\_\_ day of \_\_\_\_\_, 2008, by and between LEON COUNTY, a charter county and a political subdivision of the State of Florida, hereinafter referred to as the "County" and ScanHealth, Inc., a Minnesota Corporation, d/b/a Sansio, hereinafter referred to as the "Contractor."

WHEREAS, the County has determined that it would be in the best interest of the citizens of Leon County, Florida, that the County be able to utilize the services of private persons when such services cannot be reasonably provided by the County; and

WHEREAS, the County has determined that it would be better to contract for these services than to hire the necessary personnel to satisfy the needs of the County: and

WHEREAS, in order to secure the lowest cost for these services, the County has sought and received competitive bids from contractor for such services.

NOW, THEREFORE, the parties hereto agree as follows:

1. SERVICES TO BE PROVIDED

The Contractor hereby agrees to provide to the County with services related to the design, installation and implementation of Emergency Medical Services Electronic Care Reporting Software in accordance with: 1) the plans and specifications set forth in Leon County Request for Proposals Number BC-11-20-07-07, which is attached hereto and incorporated herein as Exhibit A, to the extent it is not inconsistent with the provisions of this Agreement; 2) the Contractors Response to the Request For Proposals, with the exception of Section 13, which is attached hereto and incorporated herein as Exhibit B, to the extent it is not inconsistent with the provisions of this Agreement; and 3) the Subscription Agreement, Sections 1, 2.1, 3, 4, 5, 7.1, 7.2, 8.1, 8.2, 9.1 (paragraph 1 only), and 11.2, which is attached hereto and incorporated herein as Exhibit C, to the extent it is not inconsistent with the provisions of this Agreement.

Any work to be performed shall be upon the written request of the County Administrator or his representative, i.e. Notice to Proceed, which request shall set forth the commencing date of such work and the time within which such work shall be completed.

The performance of Leon County of any of its obligations under this Agreement shall be subject to and contingent upon the availability of funds lawfully expendable for the purposes of this Agreement for the current and any future periods provided for within the bid specifications.

2. ORDER OF PRECEDENCE

Provisions in the following documents shall be considered to take precedence over one another, when said provisions are in conflict, in the following order:

1. Agreement
2. Exhibit A
3. Exhibit B

4. Exhibit C

3. TIME

The work to be performed under this Agreement shall be commenced within ten (10) days of the Notice to Proceed. All work related to the Installation and Implementation, as further described in Exhibit B, Section 4 (hereinafter "Project") to be performed under this Agreement shall be completed within fifty (50) consecutive calendar days of the Notice to Proceed. If the work to be performed under this Agreement as described above is not completed within the time set forth above, or within such extra time as may be granted by the County, the Contractor shall be deemed to be in default.

Permitting the Contractor to continue and finish the work or any part of it after the expiration of the contract time allowed, including extensions, if any, shall in no way act as a waiver on the part of County for damages due under this Agreement, if any.

The Agreement shall be for a period of three (3) years, commencing on May 1, 2008, and shall continue until April 30, 2011. After the initial three (3) year period, at the sole option of the County, this Agreement may be extended annually for one (1) year periods. Such one (1) year extensions will be automatic unless the County provides written notice of non-renewal to the Contractor not less than sixty (60) days prior to the expiration date of the then current term.

4. CONTRACT SUM

The Contractor agrees that for the performance of the Services as outlined in Section 1 above, it shall be remunerated by the County according to the pricing schedule contained in the Contractor's Response to Request for Proposal, Exhibit C, Section 2.2, more specifically Schedule A, and Addendum 1.

5. PAYMENTS

The County shall make such payments within thirty (30) days of submission and approval of invoice for services.

6. STATUS

The Contractor at all times relevant to this Agreement shall be an independent contractor and in no event shall the Contractor nor any employees or sub-contractors under it be considered to be employees of Leon County.

7. INSURANCE

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

- A. Minimum Limits of Insurance. Contractor shall maintain limits no less than:
1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
  2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. (Non-owned, Hired Car).
  3. Workers' Compensation and Employers Liability: Insurance covering all employees meeting Statutory Limits in compliance with the applicable state and federal laws and Employer's Liability with a limit of \$500,000 per accident, \$500,000 disease policy limit, \$500,000 disease each employee. Waiver of Subrogation in lieu of Additional Insured is required.

B. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

C. Other Insurance Provisions The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages (County is to be named as Additional Insured).
  - a. The County, its officers, officials, employees and volunteers are to be covered as insureds as respects; liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protections afforded the County, its officers, officials, employees or volunteers.
  - b. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance of self-insurance maintained by the County, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the county, its officers, officials, employees or volunteers.
- d. The Contractor's insurance shall apply separately to each insured against whom claims is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the County.

- D. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A:VII.
- E. Verification of Coverage. Contractor shall furnish the County with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the County before work commences. The County reserves the right to require complete, certified copies of all required insurance policies at any time.
- F. Subcontractors. Contractors shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

8. ASSIGNMENTS

This Agreement is not assignable by either Party without the prior written consent of the other Party, which shall not be unreasonably withheld. 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.

9. INDEMNIFICATION

The Contractor agrees to indemnify and hold harmless the County, its officials and employees from all claims, damages, liabilities, or suits of any nature whatsoever arising out of, because of, or in any way related to this Agreement by the Contractor, its delegates, agents or employees, or due to any act or occurrence of omission or commission of the Contractor, including but not limited to costs and a reasonable attorney's fee. The County may, at its sole option, defend itself or allow the Contractor to provide the defense. The Contractor acknowledges that ten dollars (\$10.00) of the amount paid to the Contractor is sufficient

consideration for the Contractor's indemnification of the County.

10. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT COMPLIANCE

The Contractor shall carry out its obligations under this Agreement in full compliance with the privacy regulations pursuant to Public Law 104-191 of August 21, 1996, known as the Health Insurance Portability and Accountability Act of 1996, as amended (hereinafter "HIPAA"), to protect the privacy of any personally identifiable Protected Health Information ("PHI") that is collected, processed or learned as a result of the services provided under this Agreement. In conformity therewith, the Contractor agrees that it will:

- 1) Not use or further disclose PHI except as permitted under this Agreement or as required by law;
  - 2) Use appropriate safeguards to prevent user disclosure of PHI except as permitted by this Agreement;
  - 3) Mitigate, to the extent practical, any harmful effect that is known to the Contractor of use or disclosure of PHI by the Contractor in violation of this Agreement;
  - 4) Report to the County any use or disclosure of PHI not provided for by this Agreement of which the Contractor becomes aware;
  - 5) Ensure that any agents, employees or instructors to whom the Contractor provides PHI, or who have access to PHI, agree to the same restrictions and conditions that apply to the Contractor with respect to such PHI under this Agreement;
  - 6) Make PHI available to the County and to the individual as a right of access as required under HIPAA within 30 days of the request by the County regarding the individual;
  - 7) Incorporate any amendments to PHI when notified to do so by the County;
  - 8) Provide an accounting of all users or disclosures of PHI made by the Contractor as required under HIPAA privacy rule within 60 days;
  - 9) Make their internal practices, books and records relating to the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services for purposes of determining the Contractor's and the County's compliance with HIPAA; and at the termination of this Agreement, return or destroy all PHI received from, or created or received by the Contractor on behalf of the County, and if return is infeasible, the protections of this Agreement will extend to such PHI.
- B. Notwithstanding any of the other provisions of this Agreement, the Agreement may be terminated by the County if the Contractor has violated a term or provision of this Section 10 pertaining to the Contractor's material obligations under HIPAA privacy rules, or if the Contractor engages in conduct which would, if committed by the County, result in a violation of the HIPAA privacy rule by the County.
- C. Return or Destruction of Health Information: Upon termination, cancellation, expiration, or other conclusion of this Agreement, the Contractor, if feasible, shall

return to the County or destroy all PHI and all health information, in whatever form or medium, including any electronic media under the Contractor's custody or control or which the Contractor received from or on behalf of Leon County, including any copies of and any health information or compilation derived from and showing an identification of such PHI or such health information. The Contractor shall complete such return or destruction as promptly as possible, but not later than 30 days after the effective date of the termination, cancellation, expiration or other conclusion of this Agreement. Within such 30-day period, the Contractor shall certify under oath in writing to the County of such return or destruction has been completed or, if return or destruction is not feasible or lawful, a written justification explaining why such PHI could not be returned or destroyed.

- D. Continuing Obligations: The Contractor's obligation to protect PHI and health information received from or on behalf of the County or any other source shall be continuous and shall survive any termination, cancellation, expiration or other conclusion of this Agreement.
- E. Response to Subpoenas: In the event that the Contractor receives a subpoena or similar notice or request from any judicial, administrative or other party arising out of or in connection with this Agreement, including, but not limited to any unauthorized use or disclosure of PHI or any failure in the Contractor's security measures, the Contractor shall promptly forward a copy of such subpoena, notice or request to the County and afford the County the opportunity to be part of the decision making with regard to the subpoena, including, but not limited to, responding to the subpoena.

11. AUDITS, RECORDS, AND RECORDS RETENTION

The Contractor agrees:

- a. To establish and maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting procedures and practices, which sufficiently and properly reflect all revenues and expenditures of funds provided by the County under this Agreement.
- b. To retain all non-Hippa related records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this Agreement for a period of five (5) years after termination of the Agreement, or if an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of this Agreement.
- c. Upon completion or termination of the Agreement and at the request of the County, the Contractor will cooperate with the County to facilitate the duplication and transfer of any said records or documents during the required retention period as specified in paragraph 1 above.

- d. To assure that these records shall be subject at all reasonable times to inspection, review, or audit by Federal, state, or other personnel duly authorized by the County.
- e. Persons duly authorized by the County and Federal auditors, pursuant to 45 CFR, Part 92.36(I)(10), shall have full access to and the right to examine any of Contractor's records and documents related to this Agreement, regardless of the form in which kept, at all reasonable times for as long as records are retained.
- f. To include these aforementioned audit and record keeping requirements in all approved subcontracts and assignments.

12. MONITORING

To permit persons duly authorized by the County to inspect any records, papers, documents, facilities, goods, and services of the Contractor which are relevant to this Agreement, and interview any clients and employees of the Contractor to assure the County of satisfactory performance of the terms and conditions of this Agreement.

Following such evaluation, the County will deliver to the Contractor a written report of its findings and will include written recommendations with regard to the provider's performance of the terms and conditions of this Agreement. The Contractor will correct all noted deficiencies identified by the County within the specified period of time set forth in the recommendations. The Contractor's failure to correct noted deficiencies may, at the sole and exclusive discretion of the County, result in any one or any combination of the following: (1) the Contractor being deemed in breach or default of this Agreement; (2) the withholding of payments to the Contractor by the County; and (3) the termination of this Agreement for cause.

13. FINAL INSPECTION

Sansio shall ensure that all Deliverables provided under this Agreement adhere to Section 508 Standards for Electronic and Information Technology Accessibility ADA, 36 C.F.R. §1194, issued under Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794(d)) (the "Section 508 Standards"). Sansio is responsible for compliance with the most current version in effect on the date that Sansio executes this Agreement.

Sansio shall test every software Deliverable provided under this Agreement, including any code created to customize commercial 'off the shelf' software (COTS) (collectively, "Deliverables"), and any updates, interfaces to third party software, new releases, versions; upgrades, improvements, bug fixes, patches or other modifications to the software ("Enhancement") developed under this Agreement, which meets or achieves Section 508 and County EMS/MIS Standards for interoperability, performance and functionality. At the time such Deliverable or Enhancement is provided to the County. Further, Sansio shall complete a joint software acceptance processes with the County.

Sansio shall be responsible for curing each instance in which any Deliverables fails to comply with the Section 508 or County EMS/MIS Standards. Sansio shall use its best efforts to

cooperate with the County to correct any problems identified during such testing with the interoperability, functionality and performance of any Deliverable or any Enhancement.

Sansio shall provide a credit against amounts due by the County under any Agreement for all testing, including repeat accessibility testing required with respect to Deliverable or Enhancement that fails to meet Section 508 or County EMS/MIS Standards during initial or any subsequent testing and are required by the County to be retested. Such credits shall not exceed 5% of either (1) the total fixed price due Sansio under this Agreement, or (2) the total not-to-exceed amount of this Agreement if entered under a time and materials basis.

14. WARRANTY

All services to be provided under this Agreement shall be warranted against defects in accordance with Exhibit C.

15. TERMINATION

Leon County may terminate this Agreement without cause, by giving the Contractor thirty (30) days written notice of termination. Either party may terminate this Agreement for cause by giving the other party hereto thirty (30) days written notice of termination. The County shall not be required to give Contractor such thirty (30) day written notice if, in the opinion of the County, the Contractor is unable to perform its obligations hereunder, or if in the County's opinion, the services being provided are not satisfactory. In such case, the County may immediately terminate the Agreement by mailing a notice of termination to the Contractor.

16. PUBLIC ENTITY CRIMES STATEMENT

In accordance with Section 287.133, Florida Statutes, Contractor hereby certifies that to the best of his knowledge and belief neither Contractor nor his affiliates has been convicted of a public entity crime. Contractor and his affiliates shall provide the County with a completed public entity crime statement form no later than January 15 of each year this Agreement is in effect. Violation of this section by the Contractor shall be grounds for cancellation of this Agreement by Leon County.

17. NON-WAIVER

Failure by the County to enforce or insist upon compliance with any of the terms or conditions of this Agreement or failure to give notice or declare this Agreement terminated shall not constitute a general waiver or relinquishment of the same, or of any other terms, conditions or acts; but the same shall be and remain at all times in full force and effect.

18. REVISIONS

In any case where, in fulfilling the requirements of this Agreement or of any guarantee, embraced in or required thereby it is necessary for the Contractor to deviate from the requirements of the bid, Contractor shall obtain the prior written consent of the County.

19. VENUE

Venue for all actions arising under this Agreement shall lie in Leon County, Florida.

20. CONSTRUCTION

The validity, construction, and effect of this Agreement shall be governed by the laws of the State of Florida.

21. NOTIFICATION

Any notification required of one Party to the other under this Agreement shall be provided in writing to the County: c/o EMS Chief, 2290 Miccosukee Road, Tallahassee, Florida 32308;  
and/or to the Contractor: c/o

WHERETO, the parties have set their hands and seals effective the date whereon the last party executes this Agreement.

CONTRACTOR

WITNESS: \_\_\_\_\_  
BY: \_\_\_\_\_

BY: \_\_\_\_\_  
President, Sansio

WITNESS: \_\_\_\_\_  
DATE \_\_\_\_\_

(CORPORATE SEAL)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By \_\_\_\_\_, of \_\_\_\_\_,  
(Name of officer or agent, title of officer or agent)

(Name of corporation acknowledging)

a \_\_\_\_\_ corporation, on behalf of the corporation. He/she is personally  
(State or place of incorporation)

known to me or has produced \_\_\_\_\_ as identification. (type of identification)

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Print, Type or Stamp Name of Notary

\_\_\_\_\_  
Title or Rank

\_\_\_\_\_  
Serial Number, If Any

LEON COUNTY, FLORIDA

BY: \_\_\_\_\_  
Jane G. Sauls, Chairman  
Board of County Commissioners

DATE: \_\_\_\_\_

ATTEST:  
BOB INZER, CLERK OF THE COURT  
LEON COUNTY, FLORIDA

By: \_\_\_\_\_

APPROVED AS TO FORM:  
LEON COUNTY ATTORNEY'S OFFICE

By: \_\_\_\_\_  
Herbert W.A. Thiele, Esq.  
County Attorney