

AGREEMENT
BETWEEN
KING COUNTY, WASHINGTON
AND

**FOR USE OF A WEB-BASED
TRAINING PROGRAM**

OUTSIDE WASHINGTON STATE

EMS ONLINE

This agreement (“Agreement”) is between King County (“the County”), and (“Agency”), an organization that has been approved, certified, or otherwise authorized in accordance with the laws of its jurisdiction to be responsible for specified aspects of training emergency medical services (“EMS”) with its principal place of business at U.S.A., (“Party” or “Parties”).

1. PREFACE

This Agreement includes these terms and conditions and the following attachments which are incorporated by reference as if fully stated herein:

Attachment A – Notarized written approval from the Agency’s Medical Program Director, or person otherwise authorized to provide medical supervision of the Agency’s training EMS activities (“MPD”)

Attachment B – Notarized statement by authorized representative of the Agency that the Agency has been approved, certified, or otherwise authorized in accordance with the laws of its jurisdiction to be responsible for specified aspects of training EMS.

2. RECITALS

WHEREAS, the County has developed and owns “EMS Online”, a web-based training program, for use by King County Emergency Medical Services (“EMS”) providers located in King County; and

WHEREAS, the Agency has been approved, certified, or otherwise authorized in accordance with the laws of its jurisdiction to be responsible for specified aspects of training EMS; and

WHEREAS, the Agency agrees not to copy or publish the content from EMS Online without King County’s written permission; and

WHEREAS, the Agency has determined that “EMS Online” training would be useful to its EMS personnel; and

NOW, THEREFORE, in consideration of payments and covenants in this Agreement, receipt of which is hereby acknowledged, the Parties agree as follows:

3. AUTHORIZED USE

The County hereby grants permission for EMS personnel of the Agency to log in to the EMS Online web site and participate in the training. Access to the EMS Online Web site under this Agreement shall be limited to personnel who have been registered with the County and who have been provided with a log in name and password for access to the EMS Online web site. The Agency agrees not to modify, distribute, sell or re-use any of the content, media, video, images, or illustrations on the web site. Any other use of the EMS Online web site, including but not

limited to the sale or distribution of any information on the EMS Online web site, is prohibited without written consent from the County. Agency use shall be authorized within fourteen (14) calendar days of King County's receipt of completed copies of Attachment A, notarized written approval from the Agency's MPD; Notarized statement that the Agency has been approved, certified, or otherwise authorized in accordance with the laws of its jurisdiction to be responsible for specified aspects of training EMS, Attachment B; fully executed User Agreement, and payment in full.

3.1 Access

Use of the EMS Online web site is limited to instructional purposes. The Agency agrees to limit access to one user per account. The Agency shall not give access of an assigned account to another person, and shall not allow shared use.

The County authorizes the users to review the EMS Online web site.

4. TERM OF AGREEMENT

This Agreement is effective upon execution by both parties of this Agreement after the County is in receipt of 1) the Agency's fully executed notarized written approval by the Agency's MPD, Attachment A to this Agreement; 2) complete the online subscription process, 3) Notarized statement that the Agency has been approved, certified, or otherwise authorized in accordance with the laws of its jurisdiction to be responsible for specified aspects of training EMS, Attachment B to this Agreement; and the applicable payment. This Agreement shall commence on the initial subscription date (anniversary date) and shall remain in effect for one year from the initial subscription date in which it is signed. Thereafter, this Agreement may renew automatically from year to year starting with the anniversary date of each year so long as the Agency updates and completes the renewal process along with the applicable payment to King County 15 days prior to the applicable renewal date.

5. COSTS

5.1 The Agency shall make an annual user fee payment to King County. The annual user fee is \$50.00 per user.

5.2 Additional users may be added to increase the annual base number by completing and submitting the EMS Online Subscription Addition form along with the payment of \$50.00 per user.

5.3 All payments are non-refundable.

6. DATA COLLECTION

The Agency agrees to allow King County to collect EMS Online exam data for research and other purposes. The Agency also agrees to allow King County access to the Agency's EMS Online database records.

7. PUBLIC DISCLOSURE REQUESTS

This Agreement shall be considered a public document and, with exceptions provided under public disclosure laws, shall be available for inspection and copying by the public.

If the Agency considers any portion of the information to be protected under the law, the Agency shall clearly identify such items with words such as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." If a request is made for disclosure of such item, the County shall determine whether the material should be made available under the law. If the material or parts thereof are determined by the County to be exempt from public disclosure, the County shall not release the exempted documents. If the material is not exempt from public disclosure law, the County shall notify the Agency of the request and allow the Agency ten (10) Days to take whatever action it deems necessary to protect its interests. If the Agency fails or neglects to take such action within said period, the County shall release the item deemed subject to disclosure. By signing this Agreement, the Agency assents to the procedure outlined in this subsection and shall have no claim against the County on account of actions taken under such procedure.

8. NOTICES

The Agency will designate one person as the point of contact between the Agency and the County. All correspondence will be through the designated contact person. That person will have the authority to direct the County to reset exams and revise individual user-related data.

9. AGENCY RESPONSIBILITIES

9.1 The Agency shall be responsible for determining whether the EMS Online web site courses comply with all federal, state, and local requirements, regarding the training or certification of the Agency's EMS personnel.

9.2 The Agency is responsible for all local technical support for its web site, including but not limited to providing, troubleshooting, installing and configuring: local computer workstations, Internet service, browsers and plug-ins, PC and network support, password support and support for administrative and content-related questions. The County will not provide local technical support for the Agency's personnel.

9.3 The Agency retains all responsibilities for training its personnel.

The Agency retains all responsibility for monitoring or otherwise ensuring compliance with the certification and ongoing training and evaluation requirements established by federal, state and local authorities.

10. COUNTY RESPONSIBILITIES

10.1 The County will establish the initial EMS Online web site account. The County will have the authority to add, remove, and update accounts and reset exams as the owner of EMS

Online. The County will, at the request of the Agency's designated contact person via email or telephone, reset exams.

10.2 The County will perform periodic backups but shall never be responsible for any lost data.

10.3 Server-side technical support provided to the designated contact person by the County entails:

- Setting up new accounts
- Answering questions about web site administration from the designated contact person
- Resetting aborted exams
- Adding new users over the base number
- Troubleshooting server-related problems

11. TERMINATION FOR CONVENIENCE/DEFAULT/NON-APPROPRIATION

11.1 Termination for Convenience

The County for its convenience may terminate this Agreement, in whole or in part, at any time by written notice sent certified mail, return receipt requested, to the Agency.

11.2 Termination for Default

If the Agency fails to perform in the manner called for in this Agreement, or if the Agency fails to comply with any material provisions of this Agreement, the County may terminate this Agreement, in whole or in part, for default as follows:

1. A "Notice to Cure" shall be served on the Agency by certified mail (return receipt requested) or delivery service capable of providing a receipt. The Agency shall have ten (10) Days to cure the default or provide the County with a detailed written plan, which indicates the time and methods needed to bring the Work into compliance and cure the default.
2. If the Agency has not cured the default or the plan to cure the default is not acceptable to the County, the County may terminate this Agreement. Termination shall occur by serving a Notice of Termination by certified mail (return receipt requested) or delivery service capable of providing a receipt on the Agency setting forth the manner in which the Agency is in default and the effective date of termination.
3. The termination of this Agreement shall in no way relieve the Agency from any of its obligations under this Agreement nor limit the rights and remedies of the County hereunder in any manner.
4. The County may immediately terminate this Agreement by written notice to the Agency and may regard the Agency as in default of this Agreement if the Agency becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise. In the event that any of the above events occurs, the Agency shall immediately notify the County of its occurrence.

11.3 Termination for Non-Appropriation

If expected or actual funding is withdrawn, reduced or limited in any way prior to the termination date set forth in this Agreement or in any amendment hereto, the County may, upon written notice to the Agency, terminate this Agreement in whole or in part.

In accordance with King County Code 4.04.040B.6, payment shall not exceed the appropriation for the year in which termination is effected. If the Agreement is terminated for non-appropriation:

The County shall be liable only for payment in accordance with the terms of this Agreement for Services rendered prior to the effective date of termination; and,

The Agency shall be released from any obligation under this Agreement or a related Purchase Order to Provide further Work pursuant to the Agreement as are affected by the termination.

Funding under this Agreement beyond the current appropriation year is conditional upon the appropriation by the County Council of sufficient funds to support the activities described in this Agreement. Should such an appropriation not be approved, the Agreement shall terminate at the close of the current appropriation year. The appropriation year ends on December 31 of each year.

12. INDEMNIFICATION

12.1 The Agency shall defend, indemnify and hold harmless King County, its officers, officials, agents and employees, or any of them for all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever by reason of or arising out of the services/property provided under this agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against King County, The Agency shall defend same at its sole cost and expense and if final judgment be rendered against King County its officers, officials, agents and employees or any of them, or jointly against King County and The Agency, their respective officers, agents and employees or any of them, The Agency shall satisfy same.

12.2 County shall indemnify and hold harmless Agency from and against any claims, including reasonable legal fees and expenses, based upon infringement of any United States copyright or patent by "EMS Online". Agency agrees to notify County of any such claim promptly in writing and to allow County to control the proceedings. Agency agrees to cooperate fully with County during such proceedings. County shall defend and settle at its sole expense all proceedings arising out of the foregoing. In the event of such infringement, County shall at its option and expense: (i) obtain the right for the Agency to continue using "EMS Online"; (ii) replace or modify "EMS Online" so that it becomes non-infringing while giving equivalent performance; (iii) if the County cannot obtain the remedies in (i) or (ii), the parties may proceed to a court of competent jurisdiction to determine the amount of fees that must be returned to the Agency.

13. LIMITATION OF LIABILITY

The County's liability for any claims of any type or character arising from errors or omissions in the Web-based Training Program is limited to the amount of the per subscription fee charged under this Agreement.

14. RELEASE

For and in consideration for the use of EMS Online, and the County relying materially thereon in granting such use, Agency agrees to release, forever discharge, hold harmless and defend the County its officers, officials, employees and agents from any liability or claim of liability which might arise out of Agency use of EMS Online.

15. NO THIRD PARTY BENEFICIARIES

Except for the Parties to whom this Agreement is assigned in compliance with the terms of this Agreement, there are no third party beneficiaries to this Agreement, and this Agreement shall not impart any rights enforceable by any person or entity that is not a Party hereto.

16. SEVERABILITY

Whenever possible, each provision of this Agreement shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid and enforceable and have the intent and economic effect as close as possible to the invalid, illegal and unenforceable provision.

17. APPLICABLE LAW AND FORUM

Except as hereinafter specifically provided, this Contract shall be governed by and construed according to the laws of the State of Washington, including, but not limited to, the Uniform Commercial Code, Title 62A RCW. Any claim or suit concerning this Contract may only be filed in either the King County Superior Court or U.S. District for the Western District of Washington, in Seattle.

18. MEDIATION AND ARBITRATION

Nothing in this subsection precludes any party from seeking relief at any time from King County Superior Court or the U.S. District Court for the Western District of Washington, in Seattle. If a dispute arises out of or relates to this Contract, or the breach thereof, and if said dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation. Thereafter, any unresolved controversy or claim arising out of or relating to this Contract, or breach thereof, may at the discretion of the parties be submitted to arbitration, and judgment upon the award rendered by the arbitrator may be entered in either King County Superior Court or the U.S. District Court for the Western District of Washington, in Seattle.

19. ENTIRE AGREEMENT

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded.

20. CONTRACT CHANGES

No oral order or conduct by the County shall constitute a change to this Agreement – neither an administrative change nor an Agreement Amendment. Both parties shall agree to Agreement changes in writing.

21. WAIVER

Waiver of breach of any provision of the Agreement shall not be deemed to be waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by the County, which shall be attached to the original Agreement.

IN WITNESS WHEREOF, the parties hereby set their hand, as dated below:

KING COUNTY

AGENCY

By: _____
James G. Fogarty, Division Director
Emergency Medical Services
Public Health – Seattle and King County

By: _____
(Authorized Signature)

Print Name

Date: _____

Date: _____