



EMS SYSTEM PURCHASE AGREEMENT

This **System Purchase Agreement** (Agreement) is effective March 1, 2020 (Effective Date) by and between Education Management Solutions, LLC, (EMS), a Delaware Limited Liability Company, located at Oaklands Corporate Center, 436 Creamery Way, Suite 300, Exton, PA 19341, and the Texas A&M University Health Science Center (TAMHSC), a health related institution under the administration of Texas A&M University (TAMU), a member of the Texas A&M University System TAMUS), an agency of the State of Texas, on behalf of its Clinical Learning Resource Center (Client). Education Management Solutions and Texas A&M University Health Science Center are also referred to individually as “party” and collectively as “parties”.

BACKGROUND

The Client desires to have EMS supply and install on its site the EMS Enterprise System (Project), and EMS desires to complete this task on the terms of Agreement. EMS has prepared and delivered to the Client:

- a designated Project Number: TBD
- a Proposal dated March 1, 2020, a copy of which is attached to Agreement as Exhibit A: The Proposal, delineating the components of the Project including the EMS proprietary Software to be installed.

NOW, THEREFORE, intending to be legally bound hereby, the parties agree as follows:

1. MILESTONES FOR COMPLETION OF THE PROJECT

The Project shall proceed on the basis of the following milestones (Milestones):

- a. Receipt of Purchase Order by EMS: The date EMS receives the Purchase Order for the Project to begin detailed design and engineering drawings.
- b. Engineering Date: The date EMS has completed the system design, including the final design drawings and engineering steps.
- c. Installation Date: The date the complete Project has been installed at the Premises as specified in the Proposal.
- d. Training Date: The date when Training is completed for the Project.
- e. Project Acceptance Date: The date on which EMS shall have substantially completed the Project by completion of installation of the Project at the Premises and demonstration of integration of the Project as specified in the Proposal. If this date is not memorialized in a written form, first use of system by Client or its employees or students shall constitute acceptance of the System.
- f. TotalCAREiQ Start Date: The date Post System Acceptance Services begin.

2. SCOPE OF WORK

The Proposal (Exhibit A) sets forth the Components of the EMS Enterprise System to be installed at the Client’s sites including Software and the Functional Description. The EMS System Installation Terms (Exhibit B) sets forth the terms of installation of the Project. The Software Subscription Terms (Exhibit C) details the terms of the Software Subscription included in this Project. TotalCAREiQ: Post System Acceptance Services (Exhibit D) provides the ongoing services post installation of the System. The Project may be amended by the parties from time to time by subsequent Addenda agreed to by the parties in writing under the procedures set forth in Agreement.

3. INSTALLATION

EMS shall provide and install the Project at the Client’s designated premises located at:

1020 Holcombe, Houston, TX

(Premises)

In accordance with the terms set forth in Exhibit B: Project Installation Terms. EMS shall provide all products, software, engineering, services, materials, equipment, tools, training, incidentals, and perform all work necessary to complete the installation, as described in the Proposal, all of which shall be included in the Price.

4. CHANGES TO THE PROJECT

The Client may request in writing that EMS make changes to the Project to extend the time for performance or to modify, change, omit, add to or suspend the Project. EMS shall have no obligation to modify the capability of the Software except where such modification is required to make the Software conform to EMS' documentation or warranty with respect to

the functionality of the Software. To the extent that any changes to the Project requested by the Client result in a change to the Price of Project or Project, EMS shall provide the Client with an equitable adjustment in the Price. EMS shall advise the Client in writing, within 10 days of the receipt of the Client's request for changes, of any changes in the Price as a result of the Client's requested changes in the Project, along with reasonable documentation of the basis for the change in the Price. Within 10 days of Client's receipt of EMS' Price changes, the Client shall advise EMS as to whether the Client approves the revision to the Price. If the revised Price is accepted by the Client, a Purchase Order or executed change order covering the changes to the Project for the Price agreed upon will serve as an Addendum to Agreement to document the changed scope of the Project and the amended Price.

5. THE PRICE

The Price for the Project is \$465,335. The proposed scope of the project is set forth in Exhibit A: Project Proposal. Thirty (30) days from receipt of the Purchase Order issued by the Client, \$97,815 of the Price set forth in the Proposal is due and payable to EMS. This amount represents the Software portion of the Project requiring custom configuration. EMS shall not be obligated to proceed with any work set forth in the Proposal until EMS has received such payment. EMS shall submit invoices to the Client for the balance of the Price as follows:

The \$101,800 hardware cost is due and payable to EMS upon delivery receipt of hardware at installation site. Shipping is FOB destination. The remaining Price will be invoiced in three installment , \$81,100 plus any additions or deletions to the Project upon the Installation and Acceptance Date. The remaining Price will be invoiced in two annual amounts of \$92,310 for a total of \$184,620.

- a. Annual SIMULATIONIQ Cloud Subscription Fee (\$68,000) and Annual TotalCAREIQ Gold (\$24,310), will be invoiced 60 (sixty) days prior to expiration of the first year's subscription.
- b. The Cloud Subscription Fee will include the software subscription and storage. The first year Software Subscription is included in the Project Cost as detailed in the Proposal (Exhibit A).
 - i. First year includes 8.5 TB storage with 1.7 TB Streaming per month.
 - ii. Refer to Exhibit C: Software Subscription Terms for additional terms.
- c. The TotalCAREIQ Gold Fee is included for the first year following the Project installation at no cost.
 - i. Refer to Exhibit D: Post System Acceptance Service for additional terms.
- a. The Client shall pay EMS the Price for the Project, subject to such adjustments as may be required by Agreement or agreed to by the parties in writing. Any tax (including but not limited to sales tax, Goods and Services Tax (GST), etc.) liability related to the Project shall be paid by the Client. The Client shall provide EMS with written confirmation of any exemption from sales tax held by Client. EMS shall invoice the Client in accordance with the payment terms set forth in Agreement, subject to modification by any future Addenda. Invoices may be presented to the Client electronically and payment of undisputed amounts will be due and payable within thirty (30) days from receipt of invoice. Upon resolution of any disputed charges, EMS shall invoice such remaining charges to Client. Payment of the revised charges shall be payable within thirty (30) days of receipt of revised invoice. All past due amounts will be subject to a finance charge in accordance with the Texas Prompt Payment Act, Chapter 2251, *Texas Government Code*. EMS will provide the Client with wire transfer instructions, which shall be the preferred method of payment.

6. SOFTWARE SUBSCRIPTION

Effective upon the Training Date, subject to the terms and conditions of Agreement (including Exhibit C: Software Subscription Terms), EMS hereby grants to the Client for use by its employees, faculty, students and invitees participating in student education activities, a subscription to use the Software described in the Proposal on the Premises in the operation of the Project under the terms set forth in the Proposal, subject to the terms of Exhibit C: Software Subscription Terms attached hereto.

7. NOTICES AND AUTHORIZED REPRESENTATIVE

The person with authority to act for and bind a party to Agreement shall be such party's "Authorized Representative" set forth below. Until notified as to their respective successors, the Authorized Representative for EMS and the Client are as follows:

Sharada Singh, COO
(EMS Authorized Representative)

Sharada.singh@simulationiq.com
(Email address)

Jeffery T. Burton, Associate VP for Finance &
Administration and CFO

(Client Authorized Representative)

burton@tamu.edu

(Email address)

All notices to EMS shall be directed to the attention of:

Attn: Contract Department
Education Management Solutions,
LLC 436 Creamery Way, Suite 300
Exton, PA 19341
Email:

Contracts@SIMULATIONIQ.com All notices to the CLIENT shall be
directed to the attention of:

Texas A&M University Health Science Center
Clinical Learning Resource Center
8447 Riverside Parkway, Suite 2006D
Bryan, Texas 77807
Attn: B. Holland

Copy To:
Texas A&M University Health Science Center
Clinical Building 1, Suite 3100
8447 Riverside Parkway, Suite 3100
Attn: Associate VP for Finance & Administration and CFO

Notices required or permitted to be given under Agreement shall be in writing and shall be addressed to the Authorized Representative of a party at the address of such party set forth above or to such other address as one party may give to the other for such purpose. Notices sent by e-mail with written confirmation sent by the US postal service, or by recognized overnight delivery service, shall be deemed given on the next business day after dispatch.

8. TERMINATION OF AGREEMENT

- a. Either party may terminate Agreement for default by the other party by written notice to other party, provided that the terminating party shall have given at least 30 days advance written notice of its intent to terminate Agreement for default, and the defaulting party shall have failed to cure the default within the required time, or, if such cure cannot be reasonably accomplished within such 30 day period, the defaulting party has not taken all commercially reasonable action to cure the default at the earliest commercially reasonable time and does not continue to prosecute such actions diligently until such defaults are cured.
- b. The Client may terminate Agreement upon 30 days' notice to EMS if the Client desires a change to the Project under Section 4: Changes to the Project, and the parties are unable to agree on an Addendum and an amended Price.
- c. Upon termination of Agreement for the default of the Client, the software subscription in Section 6: Software Subscription shall terminate, and the Client may not make any further use of the Software and shall return or destroy any and all copies of the Software and any documentation provided with or for the Software.
- d. Upon termination of Agreement for any reason, other than termination by Client for default by EMS, the Client shall be obligated to pay to EMS the Price earned through the effective date of termination based upon Milestones completed plus the additional costs and expenses incurred by EMS in prosecuting after completion of the last Milestone completed including a reasonable allocation of overhead and profit of 10%

(but not more than the total Price). Upon termination of Agreement by Client for default by EMS, the Client shall be obligated to pay to EMS the above amounts to the extent not disputed. EMS will promptly invoice the Client for such amounts with reasonable documentation, and the Client shall pay such invoice within thirty (30) days of the invoice date.

9. CLIENT REPRESENTATIONS AND WARRANTIES

The Client represents and warrants to EMS the following:

- a. (i.) The Client is an entity duly organized and validly existing under the laws of the State of []; (ii.) the person executing Agreement on behalf of the Client is authorized to do so; and (iii.) the Client is unaware of any governmental action or pre-existing obligation that would prevent it from performing its obligations as set forth in Agreement.
- b. Proper entity and other authority exist for the Client to execute Agreement and commit and pay the entire Price in accordance with Agreement.
- c. The execution of Agreement by Client will not violate the terms of any understanding, agreement, or order between the Client and any third party.

10. CONSEQUENTIAL DAMAGES

Excluding EMS's obligations under Section 11, neither of the Parties shall be liable to the other under Agreement for any incidental, special, punitive, exemplary or consequential damages of any kind or character, whether based on contract, tort or any other theory of liability. The entire liability of EMS to Client arising from or in connection with Agreement, however caused, regardless of the form of action and on any theory of liability, including contract, strict liability, negligence or other tort, shall be limited to direct damages not to exceed in the aggregate the amount actually paid or payable by Client to EMS for the affected goods or services.

11. INDEMNIFICATION

- a. EMS shall indemnify, defend and hold the Client, its subsidiaries, affiliates, successors and assigns, harmless from all damages, liabilities, claims, suits, expenses or costs, including reasonable attorneys' fees (together "Losses"), to the extent that such Losses arise out of: (i.) the gross negligence or willful misconduct of EMS or any person permitted by EMS to perform work on the Project; (ii.) any breaches of EMS' representations or warranties under Agreement; or (iii.) any and all claims by third parties to the extent such claims are attributable to Client's or any of Client's employees, faculty or students use of the Software.
- b. The Client shall provide EMS with prompt notice of any claim that might be the subject of indemnity under Agreement. EMS shall have primary responsibility for the defense of any such claim, including but not limited to the right to settle or to compromise any Loss. The Client shall not settle or compromise any claim that might be the subject of a Loss under Agreement without the consent of EMS, which consent shall not be unreasonably withheld. The Client shall provide reasonable assistance to EMS with respect to the defense of any Loss, including making documents and witnesses employed by the Client available to EMS without cost.

12. CONFIDENTIAL INFORMATION

Any and all data, documents, reports, and other written information containing confidential information of either party (Confidential Information) that is provided to the other party in connection with Agreement shall be used only in connection with performance of such party's obligations in connection with Agreement and completion of the Project and shall not be disclosed to third parties. All such Confidential Information, other than materials in electronic backup systems or otherwise not reasonably capable of being readily located and segregated without undue burden or expense, shall be returned to the disclosing party promptly upon completion of the Project, or upon request, and the receiving Party shall not retain or otherwise use any such Confidential Information without the written consent of the disclosing party. The receiving party may also securely retain one copy of materials embodying Confidential Information in its files solely for record purposes Confidential Information shall not include any information or matter that: (a.) is already known to the receiving party, as documented by written records; (b.) is or becomes rightfully disclosed to the receiving party by a third party not under an obligation of confidentiality to the disclosing party; or (c.) is or becomes publicly known other than through unauthorized disclosure by the receiving Party.

13. PRESS RELEASES

Any press release or public announcement related to Agreement or to the terms and conditions of Agreement must be mutually agreed upon by the parties prior to its issuance, except to the extent such release or

announcement is required by law.

14. FORCE MAJEURE

EMS shall not be liable for any failure to perform under Agreement to the extent such failure is the result of causes beyond the control and without the fault or negligence of EMS, including but not limited to wars, strikes, fires, acts of God, acts of a public enemy, terrorism or threats of terrorism, labor difficulties, shortages of raw materials or components, or freight embargoes. For purposes of Agreement, "Force Majeure Event" means, with respect to a Party, any event or circumstance, whether or not foreseeable, that was not caused by that Party (other than a strike or other labor unrest that affects only that Party, an increase in prices or other change in general economic conditions, a change in law, or an event or circumstance that results in that Party's not having sufficient funds to comply with an obligation to pay money) and any consequences of that event or circumstance. If a Force Majeure Event prevents a Party from complying with any one or more obligations under Agreement, that inability to comply will not constitute breach if (a) that Party uses reasonable efforts to perform those obligations, (b) that Party's inability to perform those obligations is not due to its failure to (1) take reasonable measures to protect itself against events or circumstances of the same type as that Force Majeure Event or (2) develop and maintain a reasonable contingency plan to respond to events or circumstances of the same type as that Force Majeure Event, and (3) that Party complies with its obligations under this paragraph. If a Force Majeure Event occurs, the noncomplying Party shall promptly notify the other Party of the occurrence of that Force Majeure Event, its effect on performance, and how long the noncomplying Party expects it to last. Thereafter the noncomplying Party shall update that information as reasonably necessary. During a Force Majeure Event, the noncomplying Party shall use reasonable efforts to limit damages to the other party and to resume its performance under Agreement

15. GOVERNING LAW AND JURISDICTION

- a. The validity of Agreement and all matters pertaining thereto, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.
- b. Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against CLIENT shall be in the county in which the primary office of the chief executive officer of CLIENT is located. At the execution of Agreement, such county is Brazos County, Texas.

16. ASSIGNMENT

Neither Party may assign Agreement, or any rights or obligations under Agreement; except to the extent that EMS chooses to use a subcontractor for a portion of the Project. Any assignment without the express written consent of the other Party will be invalid. Notwithstanding the foregoing, EMS may assign Agreement to any parent, subsidiary, affiliate or successor by merger, stock sale or sale of all or substantially all of its assets without the consent of Client.

17. NONDISCRIMINATION

All services provided under Agreement shall be provided without regard to the race, color, creed, sex, age, disability status, payer source religion, genetic information, veteran status, sexual orientation, and gender identity or national origin of participants requiring such services. In addition to any other requirements of law, neither EMS nor the Client shall discriminate against any employee, applicant for employment, student or applicant for registration because of age, race, religion, color, handicap, sex, sexual orientation, genetic information, veteran status, and gender identity or national origin in the performance of their obligations under Agreement, including, but not limited to the following: employment, upgrading, promotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeships. Notices will be posted in compliance with applicable state and federal laws in conspicuous places, available for employees and applicants for employment, setting forth the provisions of this nondiscrimination clause, as required by law.

- 18. INSURANCE:** EMS shall obtain and maintain, for the duration of Agreement or longer, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to CLIENT. By requiring such minimum insurance, CLIENT shall not be deemed or construed to have assessed the risk that may be applicable to EMS under Agreement. EMS shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. EMS is not relieved of any liability or other obligations assumed pursuant to Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to CLIENT at least ten days before the effective date of the cancellation.

Insurance:

Coverage

Limit

Worker's Compensation

Statutory Benefits (Coverage A)
Employers Liability (Coverage B)

Statutory
\$1,000,000 Each Accident
\$1,000,000 Disease/Employee
\$1,000,000 Disease/Policy Limit

Workers' Compensation policy must include under Item 3.A. on the information page of the workers' compensation policy the state in which work is to be performed for CLIENT. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted

Automobile Liability

Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Single Limit of liability per accident for Bodily Injury and Property Damage;

Commercial General Liability

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products / Completed Operations	\$1,000,000
Personal / Advertising Injury	\$1,000,000
Damage to rented Premises	\$300,000
Medical Payments	\$5,000

The required commercial general liability policy will be issued on a form that insures EMS's or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of Agreement.

Cyber/Privacy Liability insurance with limits of \$1M per event, \$1M aggregate covering network security/privacy liability, privacy regulatory proceedings (including fines and penalties), privacy event expenses (mandatory/voluntary notification costs, credit monitoring, call center services, forensic, and any other fees, costs, or expenses necessary to comply with any security breach notification law that may be applicable), and cyber extortion payments. EMS shall maintain for such length of time as necessary to cover any and all claims.

EMS will deliver to CLIENT:

Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of Agreement and prior to the performance of any services by EMS under Agreement. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than 30 days after each annual insurance policy renewal.

All insurance policies, with the exception of worker's compensation, employer's liability and professional liability will be endorsed and name the Board of Regents for and on behalf of The Texas A&M University System, The Texas A&M University System and CLIENT as Additional Insureds up to the actual liability limits of the policies maintained by EMS. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage. The Commercial General Liability Additional Insured endorsement will include on-going and completed operations and will be submitted with the Certificates of Insurance.

All insurance policies will be endorsed to provide a waiver of subrogation in favor of the Board of Regents of The Texas A&M University System, The Texas A&M University System and CLIENT. No policy will be canceled without unconditional written notice to CLIENT at least ten days before the effective date of the cancellation. All insurance policies will be endorsed to require the insurance carrier providing coverage to send notice to CLIENT ten days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required under Agreement.

Any deductible or self-insured retention must be declared to and approved by CLIENT prior to the performance of any services by EMS under Agreement. EMS is responsible to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

Certificates of Insurance and Additional Insured Endorsements as required by Agreement will be mailed, faxed, or emailed to the following CLIENT contact:

Name: Clinical Learning Resource Center
Address: 8441 Riverside Parkway, Suite 2006D
Email Address: BHolland@tamu.edu

The insurance coverage required by Agreement will be kept in force until all services have been fully performed and accepted by CLIENT in writing.

19. MISCELLANEOUS

- a. Agreement does not create any agency, employment, partnership, joint venture, or other joint relationship. EMS is an independent contractor. No party has any authority to bind the other party. The parties expressly acknowledge that EMS is not an employee or agent of the Client and that EMS does not, by reason of Agreement or by the performance, become entitled to participate in, or to receive any benefits or right under, any of the Client's employee benefit or welfare plans, including but not limited to the Client's employee insurance, pension, or retirement, programs.
- b. Client shall not directly or indirectly: (a.) solicit or attempt to induce any individual who then is, or at any time during the preceding six month period was, an employee of EMS to become employed by or otherwise render services to the Client; or (b.) employ any such individual. This Section 18b does not prohibit Client from hiring any individual who responds to an advertisement or announcement that is not directed specifically at employees of EMS.
- c. If and to the extent any provision of Agreement is held illegal, invalid, or unenforceable in whole or in part under applicable law, such provision or such portion thereof will be ineffective as to the jurisdiction in which it is illegal, invalid or unenforceable to the extent of its illegality, invalidity or unenforceability, and such provision will be deemed modified to the extent necessary to conform to applicable law so as to give the maximum effect to the intent of the parties. The illegality, invalidity or unenforceability of such provision in that jurisdiction will not in any way affect the legality, validity, or enforceability of such provision or of any other provisions of Agreement in any other jurisdiction.
- d. The failure of any party to assert any of its rights under Agreement, including but not limited to the right to terminate the Agreement in the event of breach or default by another party, will not be deemed to constitute a waiver by that party of its right thereafter to enforce each and every provision of Agreement in accordance with their respective terms.
- e. Agreement may be executed in counterparts, each one of which shall constitute an original and all of which together shall constitute one and the same document. A facsimile or other electronically transmitted version, including a facsimile or digital signature, shall be considered the same as an original document for all purposes. The headings in Agreement are for reference purposes only and shall not be considered in the interpretation of Agreement.
- f. If EMS is a business entity, EMS warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of EMS has been duly authorized to act for and bind EMS.
- g. If EMS is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then EMS certifies that it is not currently delinquent in the payment of any franchise taxes or that EMS is exempt from the payment of franchise taxes.
- h. A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an Agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. ~~The Texas Family Code~~

requires the following statement: "Under Section 231.006, *Texas Family Code*, the contractor or applicant certifies that the individual or business entity named in Agreement, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that Agreement may be terminated and payment may be withheld if this certification is inaccurate."

- i. Pursuant to Section 2252.903, *Texas Government Code*, EMS agrees that any payments owing to EMS under Agreement may be applied directly toward certain debts or delinquencies that EMS owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
- j. Performance by Client under Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, then Client will issue written notice to EMS and Client may terminate Agreement without further duty or obligation hereunder. EMS acknowledges that appropriation of funds is beyond the control of Client.
- k. EMS understands that acceptance of funds under Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. EMS agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. EMS will include this provision in all agreements or contracts with permitted subcontractors.
- l. EMS acknowledges that Client is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to Agreement, as well as any other disclosure of information required by applicable Texas law. Upon Client's written request, EMS will promptly provide specified contracting information exchanged or created under any resultant agreement for or on behalf of Client. EMS acknowledges that Client may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to Agreement and EMS agrees that Agreement can be terminated if EMS knowingly or intentionally fails to comply with a requirement of that subchapter.
- m. The dispute resolution process provided for in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Client and EMS to attempt to resolve any claim for breach of agreement made by EMS that cannot be resolved in the ordinary course of business. EMS shall submit written notice of a claim of breach of contract under this Chapter to Client Vice President for Finance and Administration, who shall examine EMS's claim and any counterclaim and negotiate with EMS in an effort to resolve the claim.
- n. As an agency of the State of Texas, Client is tax exempt. Tax exemption certificate will be furnished upon request.
- o. EMS expressly acknowledges that Client is an agency of the State of Texas and nothing in Agreement will be construed as a waiver or relinquishment by Client of its right to claim such exemptions, privileges, and immunities as may be provided by law.
- p. EMS represents and warrants that the electronic and information resources and all associated information, documentation, and support that it provides to Client under Agreement (collectively, the "EIRs") comply with the applicable requirements set forth in Title 1, Chapter 213 of the Texas Administrative Code and Title 1, Chapter 206, §206.70 of the Texas Administrative Code (as authorized by Chapter 2054, Subchapter M of the Texas Government Code). To the extent EMS becomes aware that the EIRs, or any portion thereof, do not comply, then EMS shall, at no cost to Client, either (1) perform all necessary remediation or (2) replace the EIRs with comparable EIRs that meet the accessibility requirements as noted above.
- q. If any of the provision of Agreement in the application thereof to any person or circumstance, is rendered or declared illegal for any reason, or shall be invalid or unenforceable, the remainder of Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.
- r. The Parties are aware that there are constitutional and statutory limitations on the authority of Client (a state agency) to enter into certain terms and conditions of Agreement, including, but not limited to, those terms and conditions relating to liens on Client's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of

litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"), and terms and conditions related to the Limitations will not be binding on Client except to the extent authorized by the Constitution and laws of the State of Texas. Neither the execution of Agreement by Client nor any other conduct, action, or inaction of any representative of Client relating to Agreement constitutes or is intended to constitute a waiver of Client's or the state's sovereign immunity to suit.

- s. By executing and/or accepting Agreement, EMS and each person signing on behalf of EMS certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of The Texas A&M University System ("TAMUS") or TAMUS Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by TAMHSC or TAMUS, has direct or indirect financial interest in the award of Agreement, or in the services to which Agreement relates, or in any of the profits, real or potential, thereof.
- t. To the extent that Texas Government Code, Chapter 2270 applies to Agreement, EMS certifies that (a) it does not currently boycott Israel; and (b) it will not boycott Israel during the term of Agreement. EMS acknowledges Agreement may be terminated and payment withheld if this certification is inaccurate.
- u. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, EMS certifies EMS is not engaged in business with Iran, Sudan, or a foreign terrorist organization. EMS acknowledges Agreement may be terminated and payment withheld if this certification is inaccurate.
- v. A state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been convicted of any offense related to the direct support or promotion of human trafficking. A bid or award subject to the requirements of this section must include the following statement: "Under Section 2155.0061, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- w. EMS is responsible to ensure that employees participating in work for any A&M System member have not been designated by the A&M System (TAMUS) as Not Eligible for Rehire as defined in A&M System Policy 33.02, Section 4. Non-conformance to this requirement may be grounds for termination of Agreement.
- x. Agreement, including all Exhibits or any additional Addenda hereto, constitute the entire Agreement of the parties with respect to the subject matter hereof and thereof and supersede all previous and contemporaneous communications, representations or understandings, either oral or written, between the parties relating to such subject matter. In the event of any inconsistency between the Agreement, the Proposal and any other portion of Agreement, the portion of Agreement which is the later to be agreed upon shall control.

IN WITNESS WHEREOF, this System Purchase Agreement is executed as of the day and year first written above as the Effective Date.


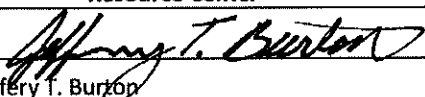
Education Management Solutions, LLC	Texas A&M University Health Science Center on behalf of its Clinical Learning Resource Center
Signature: 	Signature: 
Name: Sharada Singh	Name: Jeffery T. Burton
Title: COO	Title: Associate VP for Finance & Administration and CFO
Date: 4/13/2020	Date: 4/9/2020

EXHIBIT A:

SIMULATIONIQ™ Pricing Proposal

Item	Total
SIMULATIONIQ™ Enterprise Solution	\$199,705
EMS Professional Services:	
✓ Project Management	
✓ Engineering	\$81,010
✓ Testing & Configuration	
✓ Onsite Implementation & Installation	
✓ Onsite Training	
Annual TotalCAREiQ™ Gold Package (Year 1)	\$24,310
System Subtotal	\$305,025
Annual TotalCAREiQ™ Gold Package (Year 1) Discount	(\$24,310)
SIMULATIONIQ™ System Total	\$280,715
Estimated Recurring Annual Costs	Total
Annual TotalCAREiQ™ Gold Package	\$24,310
SIMULATIONiQ Cloud Subscription Fee (Year 2+)	\$68,000
Total System Estimated Recurring Annual Costs	\$92,310

*Note: Cloud s/w and storage is charged annually. The first year is listed in total. First year and annual recurring subscription includes 8.5TB storage with 1.7 TB Streaming per month. Additional storage is 500GB increments for additional charge of \$50 per month. Additional video streaming in 500GB per month increments for additional charge of \$100 per month.

SIMULATIONiQ™ System Detail

Room	Item	Qty	Total
	SIMULATIONiQ Enterprise Software (17 Locations) Scheduling & Management, Curriculum / Case Management, SP Training & Management, Inventory Tracking, Curriculum / Scenario Management, Sim Scenario Wizard, Assessment, Reporting, Statistics, etc.	1	
11 - Exam Rooms (421-431) (11)			
	HD-TVI PTZ Camera (Including Mount)	22	
	Microphone	11	
	Overhead Paging Speaker	11	
2 - Exam Corridors (East 413 and West) (2)			
	Overhead Paging Speaker	4	
1 - SP Corridor (417) (1)			
	Overhead Paging Speaker	2	
1 - SP Lounge (416) (1)			
	Overhead Paging Speaker	1	
1 - Faculty/Observation Room (433) (1)			
	Overhead Paging Speaker	1	
2 - Restrooms (414, 415) (2)			
	Overhead Paging Speaker	2	
4 - SIM Rooms (307-310) (4)			
	HD-TVI PTZ Camera (Including Mount)	8	
	Microphone	4	
	Overhead Paging Speaker	4	
1 - SIM Hallway (302) (1)			
	Overhead Paging Speaker	2	
2 - Skills Labs (304, 305) (2)			
	HD-TVI PTZ Camera (Including Mount)	2	
	Microphone	2	
	Overhead Paging Speaker	2	
1 - SP Lounge (313) (1)			
	Overhead Paging Speaker	1	\$85

1 - Control Station (432) (1)			
	Control Station PC	1	CFE
	Control Station Software	1	
	Stereo Headset (Streamed)	1	
	49 inch LCD Package	2	
	Paging Microphone	1	
	Overhead Paging Speaker	1	
1 - Control Station (306) (1)			
	Control Station PC	1	CFE
	Control Station Software	1	
	Stereo Headset (Streamed)	1	
	49 inch LCD Package	1	
	Paging Microphone	1	
	Overhead Paging Speaker	1	
Server Room			
	SIMULATIONiQ Video Recorder Ports & License	32	
	SIMULATIONiQ DVCS Encoder	2	Cloud
	SIMULATIONiQ DVCS Encoder Software	2	Included
	SIMULATIONiQ Enterprise Master Server - Education (w/SQL)	1	Cloud
	SIMULATIONiQ Enterprise Master Server Software	1	Included
	IIS Server	1	Cloud
	Streaming Server Software License	1	Cloud
	Cloud Appliance	1	
	AV Switch	1	
	Rack (w/ Accessories)	1	
	Camera Power Supply	2	
	Audio DSP	1	
	Audio DSP Programming	1	
	Message Player (with rack mount kit)	2	
	Paging Speaker Power Supply	1	
	SIMULATIONiQ Paging Software	1	
	Multiplexer	3	
	Crestron Control Hardware + Program	1	
	LDAP Integration	1	Existing
	SIMULATIONiQ Enterprise Web Licenses (Unlimited)	1	Included
	UPS	1	

Note: CFE means Client furnished equipment.

SIMULATIONIQ™ Functional Description

Eleven (11) Exam Rooms with dedicated observation/control room, two (2) Exam Corridors, one (1) SP Corridor, two (2) SP Lounges, one (1) Faculty/Observation Room, two (2) Restrooms, four (4) SIM Rooms, one (1) SIM Hallway, two (2) Skills Labs, two (2) Control Stations and a server room.

Each of the eleven (11) Exam Rooms (421-431) will include two (2) HD PTZ cameras, and one (1) microphone to record the events in each room. The microphone inputs shall be recorded with each camera view. One (1) overhead paging speaker shall be installed to allow live or prerecorded messages to be played. A centralized control station shall provide capability to monitor and control all camera views, and schedule all recording scenarios.

Each of the two (2) Exam Corridors (East and West), one (1) SP Corridor and the SIM Hallway EMS shall install two (2) Overhead Paging speakers each for live or automated messages to be made. The two (2) SP Lounges (313, 416), two (2) Restrooms and the Faculty/Observation Room (433) EMS shall install one (1) overhead paging speakers for live or automated messages to be made.

The four (4) Simulation rooms shall have the capability to record the activity in each room using two (2) HD PTZ cameras and one (1) microphone each. The microphone inputs shall be recorded with each camera view. EMS shall install one (1) overhead paging speaker for live or automated messages to be made. A centralized control station shall provide capability to monitor and control all camera views, and schedule all recording scenarios.

The two (2) Skills Labs shall have the capability to record the activity in each room using one (1) HD PTZ camera and one (1) microphone each. The microphone inputs shall be recorded with each camera view. EMS shall install one (1) overhead paging speaker for live or automated messages to be made. A centralized control station shall provide capability to monitor and control all camera views, and schedule all recording scenarios.

Each of the two (2) Control Station locations shall have one (1) CFE control station computer. EMS shall install SIMULATIONIQ™ Control Station Software on each control station computer. The simulation control station (432) location there shall be two (2) multiple camera display monitors for viewing of the cameras from that associated rooms on the same floor. The simulation control station (306) location there shall be one (1) multiple camera display monitor for viewing of the cameras from that associated rooms on the same floor. Each station EMS shall install one (1) stereo headset for monitoring audio within the associated room in the simulation environment. One (1) Paging microphone shall be installed at each control station location to allow the end-user the ability to record or make live audio announcements. SIMULATIONIQ™ paging software shall be installed to allow the end-user the ability to select where live or prerecorded announcements are to be routed. One (1) Overhead paging speaker shall be installed in each room to allow the prerecorded announcements can be heard.

One (1) equipment rack shall contain all the components for audio and video processing and storage. All audio and video signals from the simulation environment shall be terminated in the equipment rack so that recording is performed in a centralized fashion. UPS protection shall be provided to ensure maximum system reliability.

EMS TotalCAREIQ Gold Support Package (1st Year Annual Included)

EXHIBIT B:

PROJECT INSTALLATION TERMS

The following **System Installation Terms** are part of and incorporated by reference in the attached Project Purchase Agreement. Capitalized terms not otherwise defined in this Exhibit B shall have the meanings set forth in the Agreement.

1. THE PROJECT

- a. The Project shall be performed under the supervision of the Authorized Representative of the Client. No work shall be commenced on the Premises without such Authorized Representative's prior approval.
Benny Holland Phone: 979-463-0166, email: BHolland@tamu.edu
(Authorized Representative of the Client)
- b. The Client shall obtain all building permits and similar licenses required to be obtained by the Client as the owner of the Premises.
- c. EMS shall obtain all licenses and permits that may be necessary to perform the Project.
- d. If EMS believes that there is or may be any doubt as to any requirement of Agreement, EMS may submit a written request for clarification to an Authorized Representative of the Client together with any clarification proposed by EMS. The Client shall respond to any such request within 48 hours to avoid delays in the installation of the Project.
- e. Client will inspect for visual damage and accept visually undamaged equipment delivered to the installation site at the Premises. Client will store the equipment in a secure location until the installation is complete. EMS will provide the Client notification of pending equipment deliveries and Client will promptly notify EMS of receipt of any delivery.
- f. Client shall provide written verification to EMS of site readiness at least 30 days prior to the anticipated start date of installation. Delays resulting from the site not being ready for installation after receipt of the written verification will result in additions to the Price of \$2,500 per day of delay.
- g. The Client shall provide and maintain a suitable installation site at the Premises and an operating environment that is dust free and ready to accept electronic components.
- h. EMS will perform the Project in compliance with applicable laws, regulations, rules and ordinances of any applicable governmental authority.
- i. EMS will perform the Project personally, or through an EMS approved subcontractor. EMS shall not permit or allow any laborer, mechanic or material supplier liens on the Premises or other Client property that may arise out of the Project or out of any labor, materials or equipment furnished by any person under Agreement.

EXHIBIT C:

SOFTWARE SUBSCRIPTION TERMS

The following **SIMULATIONiQ Software Subscription Terms** are part of and incorporated by reference in this EMS System Purchase Agreement. Capitalized terms not otherwise defined in this Exhibit C shall have the meanings set forth in the Agreement.

The Software Subscription will take effect (the **"Effective Date"**) on the Training Date.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

"Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Client" means the non-EMS party named above and its Affiliates.

"Client Data" means all electronic data or information submitted by Client in the use of the Services by Client.

"Malicious Code" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

"Order Forms" means the ordering documents for purchases hereunder, including addenda thereto, that are entered between EMS and Client from time to time. Order Forms shall be deemed incorporated herein by reference.

"Project Acceptance Date" means the date on which EMS shall have substantially completed the Project by completion of installation of the EMS Services at the Client site. If this date is not memorialized in a written form, first use of Services by Client or its Authorized Users shall constitute acceptance.

"Services" means the online, Web-based applications and platform provided by EMS via designated websites that are ordered by the Client under an Order Form, including associated offline components but excluding Third Party Applications.

"Third-Party Applications" means online, web-based applications and offline software products that are provided by third parties, interoperate with the Services, and are identified as third-party applications, including but not limited to those listed on EMS' website.

User Guide means the user guide for the Services, as updated from time to time.

"Users" means individuals who are authorized by Client to use the Services, for whom subscriptions to a Service have been purchased, and who have been supplied user identifications and passwords by Client (or by EMS at Client's request). Users may include but are not limited to employees, faculty members, consultants, contractors and agents of Client, students of the Client, or third parties with which Client transacts business.

2. SERVICES

2.1 Provision of Services. EMS shall make the Services available to Client pursuant to Agreement and the applicable Order Forms during each subscription term (as defined in the "Term of User Subscriptions" section below). Client agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by EMS regarding future functionality or features.

2.2 Availability of Services. EMS shall provide the Services to Client in accordance with the highest industry standards. Company reserves the right to modify the Client's Services from time to time with Client's approval in accordance with generally applicable changes in EMS' service offerings. Client shall hereunder obtain no property right or interest in the use of any specific type of facility, service connection, equipment, number, process or code.

2.3 Authorized Users. Unless otherwise specified in the applicable Order Form, (Exhibit A) EMS grants Client a renewable, irrevocable (unless as provided for herein), nonexclusive, nontransferable royalty-free right for any Client employee, faculty, student, contractor, or agent, or any other individual or entity authorized by Client (each, an "Authorized User") to access and use the Services for the sole purpose of internal use of the Client within the United States of America. (i) Services are purchased as User subscriptions and may be accessed by no more than the specified number of Authorized Users, (ii) additional User subscriptions may be added during the subscription term at the same pricing as that for the pre-existing subscriptions, prorated for the remainder of the subscription term in effect at the time the additional User subscriptions are added, and (iii) the added User subscriptions shall terminate on the same date as the pre-existing User subscriptions. User subscriptions are for designated Users and cannot be shared or used by more than one User, but may be reassigned to new Users replacing former Users who no longer require ongoing use of the

Services.

- 2.4 **EMS Responsibilities.** EMS shall: (i) provide to Client TotalCAREIQ support for the Services, (ii) provide an uptime warranty as set forth in the Service Level Agreement (SLA) attached as Exhibit C-2 and (iii) provide the Services only in accordance with applicable laws and government regulations.
- 2.5 **Client Responsibilities.** Client shall be responsible for (a) Users' compliance with Agreement, (b) maintaining and supporting third party software and OS patches not provided by EMS. Client shall not (a) make the Services available to anyone other than Users, (b) sell, resell, rent or lease the Services, (c) knowingly use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortuous material, or to store or transmit material in violation of third-party privacy rights, (d) knowingly use the Services to store or transmit Malicious Code, (e) knowingly interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) knowingly attempt to gain unauthorized access to the Services or their related systems or networks.

3. THIRD-PARTY PROVIDERS

- 3.1 **Acquisition of Third-Party Products and Services.** EMS may offer Third-Party Applications for sale under Order Forms. Any Third-Party products or services incorporated in the Services remain the intellectual property of the Third-Party provider. Any acquisition by Client of third-party products or services not included on an Order Form, including but not limited to Third-Party Applications and implementation, customization and other consulting services, and any exchange of data between Client and any third-party provider, is solely between Client and the applicable third-party provider. EMS does not warrant or support third-party products or services, whether they are designated by EMS as "certified" or otherwise, except as specified in an Order Form.
- 3.2 **Third-Party Applications and Client Data.** If Client installs or enables Third-Party Applications for use with Services, Client acknowledges that EMS may allow providers of those Third-Party Applications to access Client Data as required for the interoperation of such Third-Party Applications with the Services. EMS shall not be responsible for any disclosure, modification or deletion of Client Data resulting from any such access by Third-Party Application providers. The Services shall allow Client to restrict such access by restricting Users from installing or enabling such Third-Party Applications for use with the Services.

4. FEES AND PAYMENT

- 4.1 **Subscription Fees.** Client shall pay all fees specified in Agreement. Fees are quoted and payable in United States dollars. Subscription fees are based on monthly periods that begin on the subscription start date and each monthly anniversary thereof; therefore, fees for subscriptions added in the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the subscription term.
- 4.2 **Invoicing and Payment.** Fees will be invoiced in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, fees are due net 30 days from invoice date of an undisputed invoice. Any undisputed invoiced amounts due that are not paid by the date due will be subject to a 5% late charge and will be considered in default. In case of payment default, the Client shall pay EMS' reasonable attorney's fees, collection charges and the amount due shall accrue interest at the rate of 10% per annum from the original due date. Client is responsible for maintaining complete and accurate billing and contact information in the Services.
- 4.3 **Overdue Charges.** If any amounts invoiced hereunder are not received by EMS by the due date, then at EMS' discretion, EMS may condition future subscription renewals and Order Forms on payment terms shorter than those specified in the "Invoicing and Payment" section above.
- 4.4 **Suspension of Service.** If any charge owing by Client is 30 days or more overdue, EMS may, without limiting its other rights and remedies, suspend Services until such amounts are paid in full.
- 4.5 **Payment Disputes.** EMS shall not exercise its rights under 4.3 (Overdue Charges) or 4.4 (Suspension of Service) if the applicable charges are under reasonable and good-faith dispute and Client is cooperating diligently to resolve the dispute.
- 4.6 **Taxes.** Unless otherwise stated, EMS' fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales and use, or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Client is responsible for paying all Taxes associated with its purchases hereunder. If EMS has the legal obligation to pay or collect Taxes for which Client is responsible under this paragraph, the appropriate amount shall be invoiced to and paid by Client, unless Client provides EMS with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, EMS is solely responsible for taxes assessable against it based on its income, property and employees.

5. PROPRIETARY RIGHTS

- 5.1 **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, EMS reserves all rights, title and

interest in and to the Services, including all related intellectual property rights. No rights are granted to Client hereunder other than as expressly set forth herein.

- 5.2 **Restrictions.** Client shall not (i) permit any third party to access the Services except as permitted herein or in an Order Form, (ii) create derivative works based on the Services, (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on Client's own intranets or otherwise for its own internal business purposes, (iv) reverse engineer the Services, or (v) access the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.
- 5.3 **Ownership of Client Data.** As between EMS and Client, Client exclusively owns all rights, title and interest in and to all Client Data.
- 5.4 **Suggestions.** EMS shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by Client, including Users, relating to the operation of the Services.

6. CONFIDENTIALITY

- 6.1 **Definition of Confidential Information.** As used herein, "**Confidential Information**" means all confidential information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Client shall include Client Data; Confidential Information of EMS shall include the Services; and Confidential Information of each party shall include the terms and conditions of Agreement and all Order Forms, as well as business and marketing plans, student information, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.
- 6.2 **Protection of Confidential Information.** Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own Confidential Information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of Agreement, and (ii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.
- 6.3 **Protection of Client Data.** Without limiting the above, EMS shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Client Data. EMS shall not (a) modify Client Data, (b) disclose Client Data except as compelled by law in accordance with the "Compelled Disclosure" section below or as expressly permitted in writing by Client, (c) access Client Data except to provide the Services and prevent or address service or technical problems, or at Client's request about Client support matters, or (d) destroy Client Data without Client's prior written approval.
- 6.4 **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted)

7. WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

- 7.1 **EMS Warranties.** EMS warrants that the Services shall perform materially in accordance with the User Guide and that the functionality of the Services will not be materially decreased during a subscription term. For any breach of either such warranty, Client's exclusive remedy shall be as provided in the "Termination for Cause" and "Refund or Payment upon Termination" sections below.
- 7.2 **Mutual Warranties.** Each party represents and warrants that (i) it has the legal power to enter into Agreement, and (ii) it will not transmit to the other party any Malicious Code (except for Malicious Code previously transmitted to the warranting party by the other party).
- 7.3 **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED

WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

8. MUTUAL INDEMNIFICATION

- 8.1 Indemnification by EMS.** EMS shall defend Client against any claim, demand, suit, or proceeding ("Claim") made or brought against Client by a third party alleging that the use of the Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party, and shall indemnify Client for any damages finally awarded against, and for reasonable attorney's fees incurred by, Client in connection with any such Claim; provided that Client (a) promptly gives EMS written notice of the Claim, (b) gives EMS sole control of the defense and settlement of the Claim (provided that EMS may not settle or defend any Claim unless it unconditionally releases Client of all liability), and (c) provides to EMS all reasonable assistance, at EMS' expense. If Client is enjoined or otherwise prohibited, or is reasonably likely in EMS' opinion to be enjoined or otherwise prohibited, from using the Service or a portion thereof based on a Claim covered by EMS's indemnification obligations under this Section 8.1, EMS may, at its expense and option: (a) obtain for Client the right to use the infringing portion(s) of the Service, (b) modify the infringing portion of the Service so as to render it non-infringing without substantially diminishing its functionality, or (c) replace the infringing portion of the Service with non-infringing items of substantially similar functionality; provided, however, that if none of the foregoing options are available to EMS on commercially reasonable terms, EMS may require Client to cease using the infringing portion(s) of the Service. This Section 8.1 states the entire obligation of EMS, and the exclusive remedy of Client, with respect to any actual or threatened Claim that the Service, or any portion thereof, infringes upon or misappropriates the patent, copyright, trademark or trade secret rights of a third party.
- 8.2 Indemnification by Client.** Client shall defend EMS against any Claim made or brought against EMS by a third party alleging that the Client Data, or Client's use of the Services in violation of Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, and shall indemnify EMS for any damages finally awarded against, and for reasonable attorney's fees incurred by, EMS in connection with any such Claim; provided that EMS (a) promptly gives Client written notice of the Claim, (b) gives Client sole control of the defense and settlement of the Claim (provided that Client may not settle or defend any Claim unless it unconditionally releases EMS of all liability), and (c) provides to Client all reasonable assistance, at Client's expense.
- 8.3 Exclusive Remedy.** This "Mutual Indemnification" section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of Claim described in this section.

9. LIMITATION OF LIABILITY

- 9.1 Limitation of Liability.** EXCEPT FOR THE PARTIES' OBLIGATIONS UNDER SECTION 8, IN NO EVENT, SHALL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED IN THE AGGREGATE THE TOTAL AMOUNT PAID BY CLIENT HEREUNDER OR, WITH RESPECT TO ANY SINGLE INCIDENT, THE LESSER OF \$500,000 OR THE AMOUNT PAID BY CLIENT HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT. THE FOREGOING SHALL NOT LIMIT CLIENT'S PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.
- 9.2 Exclusion of Consequential and Related Damages.** IN NO EVENT, SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

10. TERM AND TERMINATION

- 10.1 Term of Agreement.** Agreement commences on the Effective Date and continues until all User subscriptions granted in accordance with Agreement have expired or been terminated.
- 10.2 Term of User Subscriptions.** User subscriptions commence on the start date specified in the applicable Order Form and continue for the subscription term specified therein. Except as otherwise specified in the applicable Order Form, all User subscriptions shall renew for additional periods equal to the expiring subscription term or one year (whichever is shorter) upon written approval by Client. EMS will give Client written notice of a pricing increase at least 30 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter. Any such pricing increase shall not exceed 5% over the pricing for the relevant Services in the immediately prior subscription term, unless the pricing in such prior term was designated in the relevant Order Form as promotional or one-time.
- 10.3 Termination for Cause.** Either party may terminate Agreement for cause (i) upon 30 days written notice to the other

party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

- 10.4 Refund or Payment upon Termination.** Upon any termination for cause by Client, EMS shall refund Client any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by EMS, Client shall pay any unpaid fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event, shall any termination without cause relieve Client of the obligation to pay any fees payable to EMS for the period prior to the effective date of termination.
- 10.5 Return of Client Data.** Upon request by Client made within 30 days after the effective date of termination, EMS will make available to Client for download a file of Client Data in comma separated value (.csv) format along with attachments in their native format. After such 30-day period, EMS shall have no obligation to maintain or provide any Client Data and shall thereafter, unless legally prohibited, delete all Client Data in its systems or otherwise in its possession or under its control.
- 10.6 Surviving Provisions.** The sections titled "Definitions," "Fees and Payment," "Proprietary Rights," "Confidentiality," "Warranties and Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Return of Client Data," "Surviving Provisions" and "General Provisions" shall survive any termination or expiration of Agreement.

Exhibit C-1- Order Form (Statement of Services)

This Exhibit C-1 – Order Form (Statement of Services) shall be incorporated in and governed by the terms of that certain Software Subscription Terms and System Purchase Agreement. Unless expressly provided for in this Exhibit C-1, in the event of a conflict between the provisions contained in the Agreement and those contained in this Exhibit C-1, the provisions contained in this Exhibit C-1 shall prevail.

Cloud Subscription. Annual cloud subscription is \$68,000 per year. Included n Price for the first year. Annual renewal of the Cloud subscription is defined in this Section 4.

Storage Threshold(s). 8.5 TB of data storage and 1.7 TB of Streaming is provided by EMS; Additional storage is available in 500GB increments for an additional charge of \$50 per month. Additional video streaming is available in 500GB increments for an additional charge of \$100 per month. This price may change from time to time as market pricing changes.

Exhibit C-2 –SERVICE LEVEL AGREEMENT - TotalCAREIQ™

This Exhibit C-2 – **SERVICE LEVEL AGREEMENT - TotalCAREIQ™** shall be incorporated in and governed by the terms of that certain Software Subscription Terms and System Purchase Agreement. Unless expressly provided for in this Exhibit C-2, in the event of a conflict between the provisions contained in the Agreement and those contained in this Exhibit C-2, the provisions contained in this Exhibit C-2 shall prevail.

1.1 Service Availability & Scheduled Maintenance

- **Availability SLA** - EMS will provide system availability on the Production Environment 99.0% on the monthly basis of the time; 99.0%, assuming the following exclusions:
 - Maintenance and upgrade downtime;
 - Any event or circumstance, whether or not foreseeable, that was not caused by that EMS (other than a strike or other labor unrest that affects only EMS, an increase in prices or other change in general economic conditions, a change in law, or an event or circumstance that results in EMS's not having sufficient funds to comply with an obligation to pay money) and any consequences of that event or circumstance (an "Excluded Event"), if: (a) EMS uses reasonable efforts to provide system availability, and (b) EMS's inability to provide system availability is not due to its failure to (1) take reasonable measures to protect itself against events or circumstances of the same type as that Excluded Event or (2) develop and maintain a reasonable contingency plan to respond to events or circumstances of the same type as that Excluded Event.
 - **Remedies** - Should EMS fail to make the Application services available as set forth in this Section above ("SLA Noncompliance") in a month, Client may continue to use the Application Services and receive a credit of prepaid subscription fees equal to one twelfth (1/12) of the annual subscription amount. To request the credit for SLA Noncompliance, Client must submit in writing a request for credit to csupport@simulationiq.com within (60) days of the occurrence. Any such request should contain a detailed description and account of the reported occurrence. All claims will be verified against EMS system records. Should EMS dispute any period of unavailability alleged by Client, EMS will provide to Client a record of Application Services availability for the applicable period. EMS will provide such records only in response to claims made by Client in good faith. Should any of the following occur, Client may terminate the Agreement for cause under Section 10.3 of the Agreement: (a) SLA Noncompliance occurs three or more times during any 12-month period; or (b) system availability for any single calendar month falls below 98.0%, subject to the exclusions provided above.
- **Regular and Emergency Maintenance Windows** - EMS will perform ongoing, proactive maintenance on the hardware and software systems that provide services to our Clients. When performing any maintenance with the potential of causing a service interruption, EMS schedules this activity to take place during a pre-planned maintenance window. The typical maintenance window, when scheduled, will be over the weekend on Sunday, this may change per the type of maintenance being performed and other factors such as Client's work schedule. EMS will notify the Client at least 2 business days ahead of when such a maintenance window is scheduled to occur and how long it is expected to last. This notification will be made by email sent to the contacts listed in the Escalation Plan on file with EMS. Another email will be sent to the same contacts at the close of the maintenance window. EMS makes every attempt to perform such maintenance without disruption of service, including the integration of redundancy features in our network infrastructure, but depending on the type of work being performed, interruptions can occur. In rare instances, EMS may determine that some emergency, unscheduled maintenance action is required due to circumstances outside of our control.

1.2 Levels of Support & Availability

- **Technical Support** - EMS provides access to technical support 24 hours a day, every day via web support forms, email and fax. Phone support is from 8:00 A.M. to 8:00 P.M EST. After hour phone support is routed to the appropriate Client support representatives. The contact information for support resources can be found on EMS' web site <http://www.simulationiq.com/totalcareiq>.
- **Support Tickets** - EMS uses a support ticket system to manage problem resolution. Clients should always refer to the ticket number when inquiring about any issues via phone, email or fax. The Ticket number can be obtained from the initial communication with EMS support staff regarding the issue or during the submission of an issue via web.

1.3 Exclusions, Review & Validity of Exhibit

EMS will use reasonable commercial efforts to resolve all support requests submitted by Client as set forth in Section 1.2 above, except for issues reported to the extent due to the following factors:

- Changes in the User environment on the Client workstation to unsupported software or hardware.

- Client has used the Application Services in a manner other than in accordance with the documentation.
- Problems created because of Client's changes to Client's software, operating systems or hardware, telecommunications problems or because of customized changes to the Application Services unless such changes were previously agreed, in writing by EMS.

EXHIBIT D:

TotalCAREIQ: Post System Acceptance Services

The following **TotalCAREIQ: Post System Acceptance Services** are part of and incorporated in this EMS System Purchase Agreement. Capitalized terms not otherwise defined in this Exhibit D shall have the meanings set forth in the Agreement.

The **TotalCAREIQ™** portion of the Project will begin on the 1st of the month following System Acceptance and continue until TotalCAREIQ and the Software Subscription Terms are no longer continued on an annual basis or terminated under the terms of the System Purchase Agreement.

EMS shall provide to the CLIENT **TotalCAREIQ Gold** under the terms set forth below.

Maintenance and Support

1. Diagnoses, Repair or Replacement

- a. Software: The EMS **TotalCAREIQ Gold** Software Support under Agreement is detailed in Exhibit C: Software Subscription Terms.
- b. Hardware: The EMS **TotalCAREIQ Gold** Hardware Support under Agreement includes diagnosis, repair and replacement of the Equipment purchased and installed by EMS, as set forth in Agreement.
 - i. Coverage for Computers and Servers will be available during the term of Agreement.
 1. EMS recommends replacement of Computers and Servers within 4 years of Project Acceptance.
 - ii. Coverage for Other Equipment will be available during the term of Agreement.
 1. EMS recommends replacement of Other Equipment within 6 years of Project Acceptance.
 - iii. If diagnosis indicates system failure is caused by Equipment beyond the recommended replacement period, EMS will arrange for repair or replacement of the equipment.
 1. Due to the age of the Equipment, replacement Equipment that is no longer available may be substituted with a functional equivalent at EMS' discretion.
 2. EMS will not maintain spare inventory for equipment beyond the recommended replacement period.

2. Advanced Replacement of Equipment

As part of **TotalCAREIQ Gold**, advanced replacement parts and equipment will be shipped using standard shipping via ground to the CLIENT to replace failed Equipment.

- a. Failed Equipment that is no longer available may be substituted with a functional equivalent at EMS' discretion.
- b. Failed equipment is to be returned to EMS or other designated location as directed by EMS within 30 days. If failed equipment is not returned within 30 days. An invoice for the replacement equipment will be sent to CLIENT for equipment not returned.
- c. Installation of the advanced replacement equipment will be coordinated between CLIENT and EMS.

3. Continuing Education

As part of the EMS **TotalCAREIQ Gold** service the CLIENT has the:

- a. Ability to participate in EMS monthly Product Webinars.
- b. Ability to request two (2) webinars per year for additional training for CLIENT staff in specific application areas chosen by CLIENT.
- c. Ability to register two (2) users per year for continuing education at EMS' training center in Exton, PA. The cost of the training, lodging and meals (at training site) will be included. Training dates are available on the EMS website.
- d. Ability to register to attend the EMS Annual Summit. The cost of registration will be included. The cost of lodging and airfare will be paid for by CLIENT. Annual User Summit dates are available on the EMS website.

4. System Health Checks and Reports

The EMS **TotalCAREIQ Gold** service includes remote preventative health checks. The Health Checks will be performed based on a schedule mutually agreed upon between the CLIENT and EMS. The Health Checks will

include a review of the Software and its settings, disk utilization and related IT settings.

- a. EMS will work with CLIENT'S IT department to ensure appropriate connectivity settings to allow EMS to perform System Health Checks.

5. Help Desk and System Troubleshooting

EMS shall provide the following help desk and system troubleshooting services under **TotalCAREiQ Gold:**

- a. The CLIENT will have access to the TotalCAREiQ Team Monday-Friday via csupport@simulationiq.com between the hours of 8am-8pm EST.
 - i. The EMS TotalCAREiQ Team will provide telephone, email and web-based assistance for information requests on features, functions and equipment operation, remote testing and trouble resolution with the On-Site Resource designated by the CLIENT.
- b. The CLIENT will have access to the TotalCAREiQ Portal 24 hours a day, 365 days a year.
- c. Trouble-shooting will be performed remotely by the TotalCAREiQ Team prior to dispatching technical support to the CLIENT site. The CLIENT will designate the On-Site Resource to participate in the remote diagnostic process.
- d. The CLIENT will provide EMS with remote access and IP connectivity for upgrades, trouble-shooting, diagnostics and testing.

CLIENT On-Site Resource:

Benny Holland	BHolland@tamu.edu
(Name)	(Email)
979-436-0166	
(Phone)	(After-hours Phone)

6. Single Contact for Hardware Warranty Support

- a. The repair of the Equipment will be performed at the CLIENT's site, manufacturer's facility or at EMS' facility, at EMS' discretion. The CLIENT will package, insure, and ship the malfunctioned unit to the maintenance location designated by EMS. Upon completion of the repair, EMS will arrange shipping of the Equipment to the original CLIENT site for installation.

7. On-site Support and Service

- a. On-site service is provided at EMS' sole discretion as part of **TotalCAREiQ Gold**. EMS will coordinate with the CLIENT to schedule technical support on-site. The service will be scheduled during normal business hours (9:00 a.m. to 5:00 p.m. local time).
- b. On-site technical support outside of normal business hours will be billed to the CLIENT at EMS' then current hourly rates.
- c. EMS may, at its discretion, use one of EMS' approved subcontractors to provide on-site technical support.

8. Changes in the Software.

The CLIENT may request that changes be made to the Software not otherwise scheduled to be released. Agreement does not cover changes in Software specifications, or other aspects of modification to the existing application. If the CLIENT requests such a change, EMS will provide a separate quote for any design and development effort, and implementation of any such changes shall be subject to the parties' written agreement.

9. EXCLUSIONS

- a. EMS shall have no obligation to provide **TotalCAREiQ Gold:**
 - i. For any Software or Hardware that has been damaged or rendered defective due to accident, negligence, misuse, abuse, abnormal use, unauthorized repair, fire, flood, vandalism, theft, any act of God, operation of Software with non-compatible software or systems or contrary to operating instructions including environmental, electrical, and operating temperature standards, or any combination of the above, or caused by accessories, alterations, or attachments of other devices not provided by EMS.

- ii. For any Software or Hardware to which a modification, attachment, alteration, or addition has been made unless the modification, addition, or alteration has previously been authorized or recommended in writing by EMS.
- iii. For problems caused by third party software, OS patches or the like.
- iv. For configurations not installed by EMS or an EMS designated contractor.
- v. For consumable items including but not limited to batteries and cables.
- vi. For deterioration of usage sensitive components such as keyboards, mice and joysticks.
- vii. To the extent that a problem reported by the CLIENT is not due to an error in the Software developed and installed by EMS, the CLIENT will pay EMS at EMS' then current hourly rates for support personnel for the time necessary to diagnose and fix the problem.

10. Maintenance Fee

- a. The EMS **TotalCAREIQ Gold** fee is \$24,310 for 12 months. It is provided at no cost for the first year.
- b. The **TotalCAREIQ Gold** fee will be invoiced annually 60 (sixty) days prior to the expiration of the initial term and any renewal term.
- c. EMS shall have the option to increase such annual fee for annual renewal periods; provided, however, in the event of any such increase, the CLIENT shall have the right to terminate Agreement within 30 days after receiving notice from EMS of any such increase by delivering written notice thereof to EMS.
- d. **TotalCAREIQ Gold** will automatically renew on an annual basis unless Agreement is terminated as provided herein.
- e. Payment shall be made by the CLIENT to EMS 30 days prior to any renewal period.

11. Term

- a. **TotalCAREIQ Gold** will take effect on the first of the month following Project Acceptance and will continue until termination or expiration of Agreement.
- b. Either party may terminate Agreement upon the occurrence of any of the following events:
 - i. In the event the other party defaults in any material obligation owed to such party pursuant to Agreement or any other Agreement between EMS and the CLIENT (including, without limitation, the License Agreement), if such material breach is not cured following at least 30 days written notice to the defaulting party.
 - ii. The other party is bankrupt or insolvent, or bankruptcy or insolvency proceedings are instituted against the other party and the proceeding is not dismissed within 60 days after commencement.
- c. Agreement shall terminate immediately upon termination of the Software Subscription.
- d. Agreement shall automatically extend for successive one-year periods unless terminated by one party providing the other party written notice of at least 60 days prior to the expiration of the current term.