EMS WEB APPLICATION SERVICE AGREEMENT

This Agreement is entered into on (02/08/2021), between SEM Applications, Inc ("Provider") and (Jackson County Public Administrator) ("Customer"), with its principal place of business located at (415 E. 12th St. 4th Floor, Kansas City MO 64016) and shall be effective as of (02/&b/2021) (the "Effective Date").

Scope of Services

1. Provider has been dedicated to providing quality software solutions for public and private Guardians and Fiduciaries since 1997. The Estate Management Software (EMS) application is the most comprehensive Estate Management software package on the market. Provider's mission is to provide a complete software solution to meet the specific needs of Guardians, Conservators, and industry-related professionals.

2. Provider realizes that the needs and requirements of customers are constantly changing and works to continually enhance EMS to meet those needs while remaining committed to ensuring that customers receive prompt attention in response to emails and calls for technical support and access to online training.

3. The following support services are provided under this agreement as defined by the attached SLA: technical support via email and/or phone Mon-Fri 8 am to 5 pm CST, after-hours emergency telephone support, online training as available, and online/remote desktop support scheduled as needed.
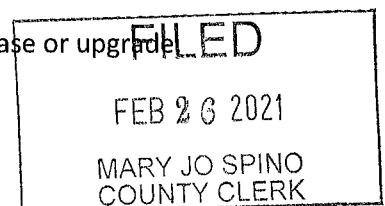
Grant of License

1. Subject to the terms and conditions herein, Provider hereby grants Customer a nonexclusive license to access and execute the EMS Web Application Enhanced Edition on Provider's application server accessed via the Internet, and transmit data related to Customer's use of EMS over the Internet.

Use and Access

1. Subject to the use restrictions set forth herein, Customer is granted access to EMS and Provider's application server for its intended purpose and in accordance with the specifications set forth in any documentation relating to EMS provided. Such use and access will be continuous on a 24/7 basis as outlined in the Service Level Agreement except for interruptions by reason of maintenance or downtime beyond Provider's reasonable control.

2. Customer will use EMS for its internal business purposes only and will not permit EMS to be used by or for the benefit of anyone other than customer and/or their clients. Customer may not modify, translate, reverse engineer, decompile, or create derivative works based upon EMS. Customer agrees to use EMS in a manner that complies with all applicable laws including intellectual property and copyright laws. Provider expressly reserves all rights not expressly granted to Customer herein.

Obligations of Provider

1. Provider will notify Customer of any material defects or malfunctions in EMS or related documentation.

2. Provider will, from time to time, and in accordance with the rates and terms set forth in this Agreement, supply Customer with relevant documentation revised to reflect significant updates and enhancements to EMS made by Provider. Such enhancements may include, without limitations, modifications to EMS that increase its speed, efficiency, and/or ease of operation.

3. Provider will give reasonable assistance to Customer in operating any new release or upgrade

4. Provider will correct, within a reasonable time following notification, inherent material errors in EMS that are not caused by Customer misuse or improper use of, alteration, or damage to EMS.

Price and Payment

1. Customer agrees to compensate Provider for use and access of EMS at the rate of $3.30* per client per month, with a minimum monthly charge of $30. *Charges apply only to cases classified as "open" for greater than 25% of the billing cycle. All "closed" cases and "hold/prospect" cases up to 50% of the total number of open cases are stored at no charge. Volume discounts available at 150, 500, & 1000 active clients. A 10% credit/debit card discount will be applied to total monthly client usage only (excluding any additional fees including but not limited to document storage and custom development) if card is able to be processed through automated batch transaction. This offer will be void if transaction does not process for any reason; offer will be reinstated on subsequent billing cycles if transaction processes successfully.*

2. Said compensation includes access to online instruction manual, technical support, online training, and unlimited closed ward/client storage. Users are allowed to designate cases as "Hold" in the ratio of 50% of the total number of active cases monthly without incurring fees. Customer requested development/customization outside of the current options and settings available within the EMS application are billed at $150.00 per hour.

3. 1 GB Electronic data storage (photo files, documents, etc.) is provided at a rate of $ 7.00 per month. If anticipated storage is greater than 1G, bulk electronic data storage must be purchased via third party vendor. *Monthly storage fee is waived for customers using less than 300 MB of data storage.*

4. Bulk electronic data storage (photo files, documents, etc.) provided by Mydocsonline.com may be accessed by client from the EMS website. Storage Agreement will be negotiated between customer and Mydocsonline.com directly.

5. Provider agrees to perform Data Conversion at a cost of $ NA Data conversion to include: Data conversion may be contracted at a later date. *Note: Data conversion subject to limitations.*

6. Payments will be made via **Check payable to SEM Applications, Inc.on or before the 1st of each monh and will continue monthly until terminated by either party under the terms of this agreement. 10% automatic Credit/ Debit card discount will be applied to total monthly client usage. Discount is void if credit card processing fails for any reason. Discount will be reinstated for subsequent months with successful credit/debit card processing.**

7. Provider reserves the right to deny Customer access to EMS if a payment is not received within thirty (30) days of the bill date, without express permission from Provider. If Provider chooses to permit Customer continued access to EMS, Provider may: (i) remove any discounts placed upon the account and charge the highest published rate for service, and/or (ii) assess a late payment charge equivalent to ten percent (10%) of the past due balance or fifteen ($15) dollars, whichever is greater.

8. The fees set forth herein are subject to change at any time. However, increase in fees may only become effective upon at least thirty (30) days prior written notice from Provider.

Confidential Information

1. All information relating to Customer or Customer's clients is considered to be confidential or proprietary, and will be held in confidence by Provider and will not be disclosed or used by Provider without express consent from Customer except to the extent that such disclosure or use is reasonably necessary to the performance of Provider's work or except under valid subpoena or court order. Confidential and proprietary information may include, but is not limited to, all Customer's trade secrets,

Customer and client data, client lists, information pertaining to Customer's products, services, copyrights, trademarks, logos, slogans, processes, ideas, names and expertise of employees and consultants, pricing, internal procedures, and finances, whether such information is received in written, oral, electronic, or other format. Confidential Information does not include information that is generally available to the public.

2. Provider shall only use Confidential Information in connection with the performance of services under this Agreement. If Provider is compelled by law to disclose Customer's Confidential Information, Provider shall notify Customer in writing at least five (5) business days from notice of such compelled disclosure, unless such notification could result in penalty for Customer, Provider, or both parties under applicable state and federal law. Provider shall have no obligation to object to any compelled disclosure. Upon termination of this Agreement, Provider shall return to Customer or destroy all Confidential Information.

3. All Customer/Customer Client data contained within EMS will remain the property of Customer. However, if Customer's account is delinquent beyond forty-five (45) days, Provider retains the right to restrict Customer's access to EMS until such time as Customer's account is brought current.

Indemnification

1. **Provider agrees, to the fullest extent permitted by law, to indemnify, and hold the County harmless from damages and losses arising from the negligent acts, errors or omissions of the Provider in the performance of work under this Agreement, to the extent that Provider is responsible for such damages and losses on a comparative basis of fault and responsibility between Provider and the County. Provider is not obligated to indemnify the County for the County's own negligence. Provider's obligations under this section shall be limited to the coverage and limits of insurance that Provider is required to procure and maintain under this Agreement. Insurance shall be procured and maintained by the Provider as described in Exhibit A of the Request for Proposals. Provider shall file Certificate of Insurance with the Jackson County Purchasing Department in the form described in Exhibit A within the time limit also described in the Exhibit.**

Warranties and Representations

1. Provider warrants and represents that: (i) it has the authority to enter into and perform services according to the terms of this Agreement; (ii) Provider is the sole owner of its software and services; and (iii) Customer's use of Provider's services will not violate any copyright, trademark, patent, or other intellectual or proprietary rights of any third party.

Force Majeure

1. Neither party to this Agreement shall be liable to the other for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, due to: acts of God or public enemy, acts of government, riots, terrorism, fires, floods, strikes, lock outs, epidemics, act or failure to act by the other party, or unusually severe weather affecting Customer, Provider or its subcontractors; or causes beyond their reasonable control and which are not foreseeable (each a "Force Majeure Event"). In the event of any such Force Majeure Event, the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay. The party experiencing the delay shall be prompt in restoring normal conditions, establishing new schedules, and resuming operations as soon as the event causing the delay or failure has ceased. Provider shall notify Customer promptly of any such delay and shall specify the effect on services as soon as is practical.

2. Notwithstanding any of the foregoing to the contrary, neither party shall be excused from those obligations not directly affected by a Force Majeure Event, and if the Force Majeure Event is caused by a party's failure to comply with any of its obligations under this Agreement or by such party's negligence or omission, there shall be no relief for such party from any of its obligations under this Agreement. Notwithstanding anything to the contrary in this Agreement, if the delay or interruption of performance resulting from a Force Majeure Event exceeds thirty (30) days, then the party receiving the delayed performance may terminate this Agreement upon ten (10) days' notice to the other party.

Limitation of Liability

1. Neither party shall be held liable for any special, punitive, indirect, incidental, or consequential damages including, but not limited to, loss of or damage to data, loss of anticipated revenue or profits, work stoppage or impairment of other assets, whether or not foreseeable and whether or not a party has been advised of the possibility of such damages; provided, however, that for the avoidance of doubt, damages arising in connection with obligations of indemnification or confidentiality shall be deemed to be "direct" damages for which recovery shall not be barred by this article.
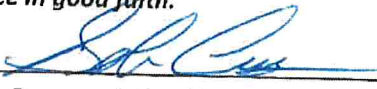
Term and Termination

1. Either party may terminate this agreement without cause so long as the terminating party provides notice of termination in writing no less than 30 days prior to the effective date of termination. In the event of termination, Customer/Customer's Client data shall be released to Customer upon request providing Customer's account is current and in good standing. Data is available to Customer in CSV/Excel format. In the event of termination without cause, Customer agrees to pay Provider for all work and/or services performed up to the date of termination.

2. Either party may terminate this agreement upon written notice for material breach, provided, however, that the terminating party gives no less than fourteen (14) days written notice and the opportunity to cure said breach.
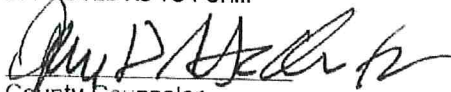
Entire Agreement

1. Parties agree that this Contract/Agreement together with the Jackson County, Missouri Request for Proposals No. 61-17 and Contractor/Respondent's response thereto constitute the complete and exclusive agreement between the parties which supersedes all prior understanding or agreements, oral or written, and all other communications between parties relating to the subject matter of this Contract/Agreement.

We hereby agree to abide by the terms and conditions set forth above and willingly enter into this Agreement for Service in good faith.

_____   Bob Crosinger   1-25-2021
Customer Representative Signature, Title   Date

_____   02/08/2021
Stan Meng, SEM Applications, Inc   Date

APPROVED AS TO FORM

_____
County Counselor

ATTEST

_____
Clerk of the County Legislature

R. 20611

REVENUE CERTIFICATE

I hereby certify that there is a balance otherwise unencumbered to the credit of the appropriation to which this contract is chargeable, and a cash balance otherwise unencumbered in the treasury from which payment is to be made, each sufficient to meet the obligation of $46,500.00 which is hereby authorized.

2-25-2021

Date

Director of Finance and Purchasing
Account No. 002 3501 56662