

**AGREEMENT BETWEEN  
FAUQUIER COUNTY  
AND  
ADVANCED DATA PROCESSING, INC., A SUBSIDIARY OF CONTRACTOR  
CORPORATION  
FOR AMBULANCE BILLING AND RELATED PROFESSIONAL SERVICES**

THIS AGREEMENT ("Agreement") is made and entered into this 14<sup>th</sup> day of April, 2015 (the "Effective Date") by and between Fauquier County, a political subdivision of the Commonwealth of Virginia, with principal offices located at 78 West Lee Street, Suite 101, Warrenton, VA 20186 ("County") and Advanced Data Processing, Inc., a subsidiary of Contractor Corporation, a Delaware Corporation with principal offices located at 6451 North Federal Highway, Suite 1000, Fort Lauderdale, Florida 33308 ("Contractor").

**RECITALS**

WHEREAS, County provides emergency and non-emergency medical services, including ambulance transport ("EMS"), for residents and visitors in its jurisdiction, and charges for such services; and

WHEREAS, Contractor provides billing, collection and related consulting services and equipment for municipalities and other providers of EMS; and

WHEREAS, on January 21, 2015, County issued a Request for Proposal for Ambulance Billing Services RFP# 47-15sm ("RFP") seeking qualified contractors to provide ambulance billing, revenue data collection services including training, technical and administrative support for use by Fauquier County Department of Fire, Rescue and Emergency Management (DFREM) and EMS Billing Administrator in the Finance Department..

The County has selected Contractor to perform the EMS Services described in the RFP attached hereto and incorporated into this Agreement (Exhibit C - Request for Proposal #47-15sm-Ambulance Billing Services, inclusive of Addendum #1 & 2) and Contractor's Reply to the RFP attached hereto and incorporated into this Agreement (Exhibit D- Contractor Response to RFP); and

WHEREAS, the parties hereto now wish to enter into an agreement, pursuant to which Contractor will render the Services as hereinafter provided;

NOW THEREFORE, the parties hereto agree as follows:

**AGREEMENT**

**1. ENGAGEMENT OF CONTRACTOR.** During the Term of this Agreement, except for accounts referred to a collection agency as provided herein, Contractor shall be exclusively responsible for the billing and collection of all charges and fees resulting from the delivery of

EMS by County, including but not limited to all charges and fees to private insurers, Medicare, Medicaid, other governmental programs, individual patients and their responsible parties (collectively, "Payors").

**2. SCOPE OF SERVICES.** Contractor shall perform and carry out Services as specifically described in Exhibit A (the "Scope of Services"; collectively the Scope of Services and the Billing Service (as defined in Section 3.01) are the "Services"), which is attached hereto and incorporated herein by this reference. County reserves the right to request changes in the Scope of Services within Contractor's capabilities, which changes shall be implemented upon mutual written agreement of the parties specifying such changes and any change in compensation attributable thereto.

**3. ACCESS TO BILLING SYSTEM.**

**3.01 Right to Use.** During the Term of this Agreement, Contractor grants to County, access to Contractor billing system solely to view County's accounts, run various reports, and access to all data associated with the billing and collection process which is wholly owned by County ("Billing Service"). During the Term of this Agreement, Contractor will not in any way transfer to any third party or use in direct or indirect competition with County any information or data posted by or for the benefit of County on Contractor's website and acknowledges that all such information is confidential ("Confidential Information"). Contractor further acknowledges that its handling of information on behalf of County is or may be subject to federal, state or local laws, rules, regulation and restrictions regarding the privacy of consumer information. Contractor agrees to comply with all of such laws, rules and regulations and restrictions at its sole cost and expense. This Access to Billing System Section and all obligations contained therein will survive any termination or expiration of this Agreement.

**3.02 User Restrictions.** County shall not, and shall not permit others to, without the express written consent of Contractor: (i) use, receive, reproduce, copy, market, sell, distribute, license, sublicense, lease, timeshare, or rent the Billing Service, any other Service or any component thereof; (ii) modify, alter, translate or prepare derivative works based on the Billing Service or Documentation is permitted; (iii) disassemble, decompile, decrypt or reverse engineer the Billing Service or in any way attempt to discover or reproduce source code for the Billing Service, or any portion thereof; or (iv) develop or license any third party programs, applications, tools or other products which interface or interact with the Billing Service. County agrees not to remove the copyright, trade secret or other proprietary protection legends or notices which appear on or in the Billing Service, any other Service or the Documentation.

**3.03 Internet Access.** County shall be responsible for providing its own Internet access necessary to provide the Billing Service, and in no event shall County be provided with direct access (by modem or otherwise) to the Billing Service server, other than access that is available to third parties generally through the Internet. The parties acknowledge that, since the Internet is neither owned nor controlled by any one entity, Contractor makes no guarantee that any given user will be able to access the Billing Services at any given time. There are no assurances that access will be available at all times and uninterrupted, and Contractor shall not be liable to County for its inability to access the Billing Service.

**3.04 Reporting.** Operational and financial data reports for County will be available on the Billing Services when the Billing Service is available. The format and content of the data will be established and defined by Contractor and such reports may be added, modified or deleted without notice to County. Notwithstanding the foregoing, County may request that specific, custom reports be created and made available as needed.

**3.05 Acknowledgement with Respect to Reports.** With respect to each report generated for County as part of the Billing Service, County acknowledges and agrees: (i) such report represents a "snapshot" of a moment in time, and as such, the snapshot may not be accurate with respect to financial results on the whole; (ii) the underlying data may be subject to correction from time-to-time, which may change the results of the report or its interpretation; and (iii) the data represented in the report constitutes only a limited portion of all data available regarding County's business. Accordingly, any particular report may not accurately represent the County's then-current or future financial condition.

**3.06 Intellectual Property.** County agrees that the equipment, computer hardware and software, billing and collection processing, Services, Billing Service and other related systems and equipment are the property and trade secrets of Contractor, and that County will not release any information regarding such Confidential Information (as such term is defined in Section 11.01) and/or trade secrets of Contractor to any third party without the prior written consent of Contractor. County further agrees that, in connection with the use of certain data entry devices, County may gain access to the intellectual property of third parties. County understands and agrees that it may be required to enter into agreements with respect to such intellectual property in order to use such equipment. County agrees to enter into such arrangements at Contractor's request.

**3.07 Audit Rights.** From time to time and upon reasonable prior written notice, Contractor may audit County's use of the Services to help ensure that County is in compliance with the terms and conditions of this Agreement, including, but not limited to, any payment terms. Any such audit will be conducted during regular business hours at the applicable facilities of County. County will identify and cooperate with Contractor (or its representatives) to provide Contractor (or its representatives) with reasonable access to all relevant equipment, personnel and records.

#### **4. COUNTY RESPONSIBILITY.**

**4.01 Generally.** County is responsible for all activity occurring under its User accounts and shall abide by all applicable laws and regulations in connection with its use of the Billing Service. County will immediately (and in no greater than twenty four (24) hours from County's knowledge of the following) notify Contractor and use best efforts to cease any further of the following: (i) any unauthorized use of a password or account or any other known or suspected breach of security; (ii) any copying or distribution of any content or other intellectual property of Contractor related to the Services that is known or suspected by County or its Users; (iii) any use of false identity information to gain access to or use the Billing Service or (iv) any loss or theft of a hardware device on which a User has access to the Billing Service (each of subsections (i) through (iv) a "Security Breach Event"). To the extent that any Security Breach Event involves Protected Health Information (as defined below), and is subject to the Health Insurance

Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936), including the privacy and security rules promulgated thereunder ("HIPAA"), as amended by the Health Information Technology for Clinical Health Act (Pub. L. No. 111-5, 123 Stat. 115) (the "HITECH Act"), County shall comply with all applicable requirements under such laws, including any applicable breach notification requirements (i.e. notifications to affected individuals, the Department of Health and Human Services ("HHS"), and prominent media outlets) (the "HIPAA Notifications") triggered by the Security Breach Event. "Protected Health Information" means Individually Identifiable Health Information (defined at 45 C.F.R. § 164.501), transmitted or maintained in any form or medium, concerning individuals for whom the County has performed EMS.

**4.02 Rights Following Notification.** Upon Contractor's receipt of notification given by the County of a Security Breach Event, Contractor shall have the right to immediately, without notice to County, suspend County's access to the Billing Service until such time as the Security Breach Event has been fully resolved, and no longer presents a threat of inappropriate access to: (i) the Billing Services, (ii) any other intellectual property rights of Contractor or its affiliates or (iii) the personal data or Protected Health Information gathered by County in the performance of EMS by the County. To the extent that a Security Breach Event requires County to provide HIPAA Notifications, any such notifications shall not include a reference to Contractor or any of its affiliates unless such a reference is specifically required by HIPAA or other applicable law. Further, if County intends to reference Contractor in a HIPAA Notification based on its belief that such a reference is required by HIPAA or other applicable law, County shall provide Contractor written notice of its intent to do so no later than ten (10) days prior to County's provision of each required HIPAA Notification (i.e. no later than ten (10) days prior to County's provision of notifications to affected individuals, HHS, and/or prominent media outlets, as applicable).

**4.03 Security.** County acknowledges that it is solely responsible for providing security software, including without limitation, firewalls and similar applications, to prevent unauthorized access to its computer systems, including malware prevention software on User's computers. County is responsible for requiring its Users to use a password to access the Billing Services in compliance with the Billing Security Characteristics. The "Billing Security Characteristics" means a password to access the Billing Services, which must be at least eight (8) characters in length, and contain three (3) of four (4) of the following characteristics: lowercase letter, uppercase letter, special character or a number. Contractor shall use commercially reasonable efforts to maintain the security of the Billing Services, but shall not be responsible for the County's loss or dissemination of passwords or other breaches beyond Contractor's reasonable control.

## **5. COMPENSATION AND METHOD OF PAYMENT.**

**5.01 Fees.** Contractor shall be paid by County a monthly amount representing fees for the Services provided by Contractor hereunder, computed as follows:

(a) Four and twenty-five hundredths percent (4.25%) of all monies collected by Contractor for EMS provided by County less refunds ("Net Collections"), plus

(b) all amounts set forth in any Exhibit attached hereto.

**5.02** Contractor shall submit the monthly invoices for fees for the Services to Fauquier County Government, Department of Finance 320 Hospital Drive, Suite 32 Warrenton, VA 20186 ATTN: EMS Billing Administrator. County shall pay the amount invoiced within forty-five (45) days of receipt of such invoice. In the event County disputes any part of the invoiced amounts, such dispute shall be raised in writing to Contractor within such forty-five (45) day period or the invoice shall conclusively be deemed to be accurate and correct. Contractor shall respond to any such notice of dispute within thirty (30) days of receipt thereof. Any overdue amounts which are not the subject of a good faith notice of dispute shall accrue interest at the rate of twelve percent (12%) per annum. County's fiscal year is July 1 - June 30. Contractors are advised to submit invoices, especially for goods and/or services provided in the month of JUNE, for the entire month i.e. June 1 - June 30, so that expenses are recognized in the appropriate fiscal year. All invoices shall show the IFB/RFP number and/or purchase order number.

**5.03** Bank Accounts. County agrees that it will be solely responsible for the cost and maintenance of any and all of County's bank accounts, lock-box and/or remote deposit services. County, should it elect to participate in any credit card acceptance program, agrees to assume and be responsible for all costs associated with such program.

**5.04** Taxes. If applicable, all amounts payable under this Agreement are exclusive of all sales, use, value-added, withholding and other taxes and duties. County shall promptly pay, and indemnify Contractor against, all taxes and duties assessed in connection with any such amounts, this Agreement and its performance by any authority within or outside of the U.S., except for taxes payable on Contractor's net income.

**5.05** Payment to Subcontractors. If applicable, (i) Contractor is to pay subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the County for the proportionate share of the payment received for work performed by the subcontractor(s) under this Agreement; or (ii) notify County and the subcontractor(s), in writing, of Contractor's intention to withhold payment and the reason.

## **6. COLLECTION EFFORTS.**

**6.01** Alternative Collection Arrangements. Contractor will have the right, on County's behalf, in its sole and complete discretion, to enter into an alternative collection arrangement with respect to any patient encounter performed by the County if: (i) the total payments are for at least eighty percent (80%) of the amount of the bill; (ii) an insurance company offers at least seventy percent (70%) of the total amount billed with a stipulation that the insured not be billed for the balance; or (iii) Contractor is able to make arrangements for the payment of patient account that provide a substantially similar economic benefit to County, as Contractor determines in its sole and complete discretion.

Scope of Collection Efforts. If reasonable efforts have been made to collect a patient account of County and such efforts have not been successful, Contractor shall notify the County for authorization to write off the account as an unpaid debt. The County will make a determination on a case-by-case basis of those accounts determined to be uncollectible.

**6.02** As used herein "reasonable efforts" shall be defined to mean at least but not limited to one hundred twenty (120) days of active collection efforts in the ordinary course of business. In addition, Contractor may terminate or suspend collection efforts in the event that County has supplied Contractor with materially incomplete or inaccurate billing and/or patient information. Absent contrary instructions from County with respect to any patient encounter, the accounts that Contractor has deemed to be uncollectible may be forwarded to the County for authorization to write off the account.

**6.03** Administrative Fee/Third Party Collection Costs. County, at its discretion, will be responsible for engaging any third party collection service for uncollectible accounts after Contractor has exhausted its collection efforts and notified the County of such. County will be directly liable for all fees of third party collection agency.

**6.04** Excluded Persons. If any refunds of patient accounts of County are required to be refunded to or offset by any government and commercial payor as a result of County's violation of its obligations set forth in Exhibit A (Scope of Services), Section B.9. (an "Excluded Person Refund"), Contractor shall not be required to refund to County any commissions or fees earned or previously paid to Contractor as a result of its collection of such Excluded Person Refund or otherwise include such Excluded Person Refunds in its calculation of Net Collections as set forth herein.

**7. SYSTEM SUPPORT.** Support and training of County's Users will be provided subject to and in accordance with the terms of the Scope of Services.

**8. INDEPENDENT CONTRACTORS.** Contractor is an independent contractor of County and not an employee or agent of County; provided, however, to the extent necessary to fulfill its billing and collection efforts under this Agreement, Contractor is authorized to sign *in an administrative capacity* for County the following types of standard forms and correspondence only; letters to patients or their representatives verifying that an account is paid in full; forms verifying the tax-exempt status of County; and insurance filings and related forms. Contractor has no authority to sign any document that imposes any additional liability on County. Contractor shall retain full control over the employment, direction, compensation and discharge of all persons assisting in the performance of the Services. Contractor shall be fully responsible for all matters relating to payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. Each party shall be responsible for its own acts and those of its agents and employees during the Term of this Agreement.

**9. LIMITATION ON LIABILITY.** IN NO EVENT WILL CONTRACTOR BE LIABLE TO COUNTY UNDER, IN CONNECTION WITH, OR RELATED TO THIS AGREEMENT FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, WARRANTY, TORT, PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE FOREGOING LIMITATIONS OF LIABILITY ARE A CONDITION AND MATERIAL CONSIDERATION FOR THEIR ENTRY INTO THIS AGREEMENT.

**10. INDEMNIFICATION.** Contractor shall indemnify, keep and save harmless the County, its agents, officials, employees and volunteers against claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against the County in consequence of the granting of his Agreement or which may otherwise result therefrom, if it shall be determined that the act was caused through the gross negligence or error, or omission of Contractor or Contractor's employees, or that of the subcontractor or its employees, if any; and Contractor shall, at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against the County in any such action, Contractor shall, at its own expenses, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this Agreement, or otherwise provided by Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County as herein provided.

**11. INSURANCE.** Contractor shall procure and maintain for the duration of the Agreement, the following insurance coverage: (i) workers' compensation insurance in compliance with the applicable state and federal laws; (ii) general liability insurance in an amount no less than \$1,000,000 per occurrence; (iii) coverage for business interruption, destruction of data processing equipment and media, liabilities affecting accounts receivable, and valuable documents in an amount no less than \$100,000 aggregate; and (iv) liability coverage for all vehicles whether owned, hired or used in the amount of \$1,000,000. Contractor shall endorse Auto and General Liability policies to name Fauquier County as additionally insured.

**12. CONFIDENTIALITY AND HIPAA BUSINESS ASSOCIATE OBLIGATIONS.**

**12.01 Confidential Information.** Each party (the "Discloser") may disclose to the other party (the "Recipient") certain non-public information relating to the Discloser's business, including technical, marketing, financial, personnel, planning, medical records and other information that is marked confidential or which the Recipient should reasonably know to be confidential given the nature of the information and the circumstance of disclosure ("Confidential Information"). Confidential Information of each party shall also include the terms of this Agreement, but not the existence and general nature of this Agreement. Confidential Information will not include any information: (i) lawfully obtained or created by the Recipient independently of, and without use of, Discloser's Confidential Information and without breach of any obligation of confidence or violation of HIPAA or the HITECH Act; or (ii) that is in or enters the public domain without breach of any obligation of confidence. County shall be responsible for any breach by any of its Users, employees or agents of any of the confidentiality obligations set forth herein.

**12.02 Use and Disclosure.** Except as expressly permitted by this Agreement or the BA Agreement (as applicable) and subject to applicable law, the Recipient will:

(a) not disclose Discloser's Confidential Information except: (i) to the employees or contractors of the Recipient to the extent that they need to know that Confidential Information for the purpose of performing the Recipient's obligations under this Agreement, and who are bound by confidentiality terms with respect to that Confidential Information no less restrictive than those contained in this Section 12.02; or (ii) as required to be disclosed by law, to

the extent required to comply with that legal obligation, provided that the Recipient will promptly notify the Discloser of such obligation;

(b) use the Discloser's Confidential Information only for the purpose of performing Recipient's obligations under this Agreement;

(c) use all reasonable care in handling and securing the Discloser's Confidential Information, and employ all reasonable data security measures that the Recipient ordinarily uses with respect to its own proprietary information of similar nature and importance; and

(d) use and disclose Confidential Information that contains Protected Health Information in accordance with the terms of the Business Associate Agreement attached hereto as Exhibit B (the "BA Agreement"), if applicable.

**12.03 Return of Confidential Information.** Subject to Contractor's internal data retention policies and applicable law, the Recipient will return to the Discloser, and destroy or erase all of the Discloser Confidential Information in tangible form, upon the expiration or termination of this Agreement, and the Recipient will promptly certify in writing to the Discloser that it has done so.

**12.04 HIPAA Business Associate Exhibit/Changes In HIPAA.** Each party agrees to the obligations set forth in the BA Agreement attached hereto as Exhibit B (the "BA Agreement"). Such BA Agreement constitutes the complete and exclusive agreement between the parties with respect to Contractor's obligations regarding Protected Health Information, superseding and replacing any and all prior agreements, communications, representations, and understandings (both written and oral) regarding such subject matter; provided, however, that in the event of any additions, modifications or amendments to any statute or regulation including HIPAA or future federal regulations adopted pursuant thereto, then Contractor and County shall promptly enter into negotiations to revise the BA Agreement to reflect such changes. Upon the execution by the parties of a revised BA Agreement (a "Revised BA Agreement"), such Revised BA Agreement will supersede the current BA Agreement in its entirety and such current BA Agreement will no longer be of any force or effect.

**12.05 Right to Injunctive Relief.** The parties expressly acknowledge and agree that the breach, or threatened breach, by a party of any provision of this Section 12 may cause the other party to be irreparably harmed and that the harmed party may not have an adequate remedy at law. Therefore, the parties agree that upon such breach, or threatened breach, the harmed party will be entitled to seek injunctive relief to prevent the other party from commencing or continuing any action constituting such breach without having to post a bond or other security and without having to prove the inadequacy of any other available remedies. Nothing in this paragraph will be deemed to limit or abridge any other remedy available to either party at law or in equity.

**13. NON-SOLICITATION.** For the Term of this Agreement and for one (1) year after its termination, County or Contractor shall not employ or hire any employee or former employees - who, pursuant to this Agreement, has had any contact with employees or representatives of either

party or has worked on County's accounts, without the prior written consent of County and Contractor.

**14. ATTACHMENTS.** The following named exhibits are attached hereto and made an integral part of this Agreement:

- (a) Scope of Services (Exhibit A); and
- (b) Business Associate Agreement (Exhibit B); and
- (c) Request for Proposal #47-15sm-Ambulance Billing Services, inclusive of Addendum #1 and #2 (Exhibit C); and
- (d) Contractor's Reply to the RFP (Exhibit D).

**15. TERM AND TERMINATION.**

**15.01 Term.** This Agreement shall be effective for an initial two-(2) year period, commencing on the Effective Date unless terminated as provided in Section 14.02 below (the "Initial Term"). Following the expiration of the Initial Term, subject to the payment of all fees due hereunder, upon mutual written agreement between both parties, this Agreement shall renew for three (3) successive, one (1) year periods ("Renewal Terms"; collectively, the Initial Term together with any Renewal Terms are the "Term"), unless either party provides the other party with written notice of termination of this Agreement as provided in Section 15.02 below. All terms and conditions hereof shall remain in full force and effect during the Term unless this Agreement is amended in a writing executed by each Party hereto. Adjustments to fixed percentage fee may be negotiated only during the ninety (90) day period prior to a Renewal Term. The County shall give the Contractor written notice of renewal ninety (90) days prior to the expiration date of this Agreement. Any fixed percentage fee adjustments mutually agreed upon by both parties, will be documented via written modification to this Agreement by the County's Procurement Division.

**15.02 Events Triggering Termination.** This Agreement shall be subject to termination under the following conditions. Any Agreement cancellation notice shall not relieve Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

(a) **Termination without Cause.** Following the period one (1) year from the Effective Date of this Agreement, County may terminate this Agreement without cause upon thirty (30) days' prior written notice to Contractor. In the event this Agreement is terminated by Contractor without cause, Contractor shall provide a written notice to the County ninety (90) calendar days prior to the termination date or Renewal term.

(b) **Termination with Cause.** Termination by the County for cause, default or negligence on the part of Contractor shall be excluded from the foregoing provision; termination costs, if any shall not apply. However, pursuant to Section 20 (Assignment) of this Agreement, the County may hold Contractor responsible for any resulting additional purchase and administrative costs. The thirty (30) days advance notice requirement is waived in the event of

Termination for Cause. If Contractor materially fails to perform any obligation required hereunder, and such default continues for thirty (30) calendar days after written notice from County specifying the nature and extent of the failure to materially perform such obligation, this Agreement shall terminate upon the expiration of said thirty (30) calendar day period.

(c) If County materially fails to perform any obligation required hereunder, and such default continues for thirty (30) calendar days after written notice from Contractor specifying the nature and extent of the failure to materially perform such obligation, this Agreement shall terminate upon the expiration of said thirty (30) calendar day period.

(d) Termination Due to Bankruptcy. If County or Contractor: (i) apply for or consent to the appointment of a petition in bankruptcy; (ii) make a general assignment for the benefit of creditors; (iii) file a petition or answer seeking reorganization or arrangement with creditors; or (iv) take advantage of any insolvency, or if any order, judgment, or decree shall be entered by any court of competent jurisdiction on the application of a creditor or otherwise adjudicating either party bankrupt or approving a petition seeking reorganization of either party or appointment of a receiver, trustee or liquidator of either party or all or a substantial part of its assets (subsections (i) through (iv), each a "Bankruptcy Event"), this Agreement shall terminate automatically and immediately upon written notice from the other party to the party who has incurred a Bankruptcy Event. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent County fiscal year, this Agreement shall be canceled.

**15.03 Rights Upon Termination.** If this Agreement is terminated for any reason, including, without limitation, the breach of this Agreement by any party, Contractor shall be entitled to recover when due and payable hereunder, all amounts owed to Contractor hereunder accrued but unpaid as of the date of termination. Following termination of this Agreement, for a period of ninety (90) days (the "Transition Period"), Contractor, at its sole discretion and upon written notice to County of its election to do so, may continue its billing and collection efforts as to those accounts referred to Contractor prior to the effective date of termination, subject to the terms and conditions of this Agreement, for the fee set forth in Section 5 above. At the end of the Transition Period, Contractor shall return all records to County in a commercially standard format on a commercially standard media as determined by Contractor in its sole discretion; provided, however, that Contractor may keep any copies of records in accordance with applicable law. The expiration or termination of this Agreement, for whatever reason, will not discharge or relieve either party from any obligation which accrued prior to such expiration or termination, will not relieve either party that has breached this Agreement from liability for damages resulting from such breach and will not destroy or diminish the binding force and effect of any of the provisions of this Agreement that expressly, or by reasonable implication, come into or continue in effect on or after expiration or termination hereof.

**16. FORCE MAJEURE.** Except for County's obligation to pay, when due, the fees and compensation owed to Contractor pursuant to the terms and conditions of this Agreement, neither County nor Contractor shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to a Force Majeure Event (as defined below), the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Force Majeure Event" shall mean any event which results in the prevention or delay of

performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the non-performing party and includes, but is not limited to fire, flood, earthquakes, storms, lightning, natural disaster, epidemic, war, riot, civil disturbance, sabotage, terrorism and governmental actions. The non-performing party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

**17. GOVERNING LAW.** This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Virginia, and any litigation with respect thereto shall be brought in the Circuit Court of Fauquier County, Virginia. The Contractor shall comply with applicable federal, state and local laws and regulations.

**18. GENERAL WARRANTIES AND DISCLAIMERS.**

**18.01 Corporate Authority.** Each party warrants that it is a duly organized and validly existing corporation and has complete and unrestricted corporate power and authority to enter into this Agreement.

**18.02 Disclaimer.** THE WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, WHICH WARRANTIES ARE HEREBY SPECIFICALLY DISCLAIMED. NO REPRESENTATIVE OF CONTRACTOR SHALL HAVE THE RIGHT TO MAKE WARRANTIES ON CONTRACTOR'S BEHALF UNLESS THOSE WARRANTIES ARE IN WRITING AND EXECUTED BY A DULY AUTHORIZED OFFICER OF CONTRACTOR.

**19. EXPORT LAWS.** County shall comply with all then current export laws and regulations of the U.S. Government and the government of the country in which County receives access to the Services.

**20. ASSIGNMENT OF AGREEMENT.** This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party shall assign this Agreement without the express written consent of the other party, and such consent shall not be unreasonably withheld. Notwithstanding the foregoing sentence, Contractor may, upon notice to County, assign this Agreement to any affiliate or any entity resulting from the sale, combination or transfer of all or substantially all of the assets or capital stock, or from any other corporate form of reorganization by or of Contractor.

**21. NOTICES.** Any notice directed to the parties' legal rights and remedies under this Agreement will be provided in writing and will reference this Agreement. Such notices will be deemed given if sent by: (i) facsimile, when complete transmission to the recipient is confirmed by the sender's facsimile machine; (ii) postage prepaid registered or certified U.S. Post mail, then five (5) working days after sending; or (iii) commercial courier, then at the time of receipt confirmed by the recipient to the courier on delivery. All notices to a party will be sent to its

address set forth below, or to such other address as may be designated by that party by notice to the other party in accordance with this Section:

To County: Fauquier County  
320 Hospital Drive, Suite 32  
Warrenton, VA 20186  
Attn: Terrilyn S. Pete, Financial Services Division Chief  
Tel: 540-422-8331  
Fax: 540-422-8326  
Email: terrilyn.pete@fauquiercounty.gov

To Contractor: Contractor Corporation  
6451 North Federal Highway, Suite 1000  
Fort Lauderdale, Florida 33308  
Attn: Brad Williams, CAO & VP

**22. SEVERABILITY.** If all or a part of a provision of this Agreement is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the remainder of that provision and all other provisions of this Agreement will not be affected.

**23. ENTIRE AGREEMENT.** This Agreement, including exhibits, attachments and written terms incorporated by reference, is the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications, and understandings (both written and oral) regarding such subject matter. Pre-printed terms and conditions on or attached to any County purchase orders or other business forms shall be of no force or effect, even if Contractor acknowledges or accepts them.

**24. AMENDMENT/WAIVER.** This Agreement may be modified, or any rights under it waived, only by a written document executed by both parties. Any failure of a party to exercise or enforce any of its rights under this Agreement will not act as a waiver of such rights. No modification for a fixed price contract may be increased by more than twenty-five (25%) or \$50,000, whichever is greater without the advanced written approval of the County's Board of Supervisors.

**25. ATTORNEYS FEES.** Should either party institute any action or procedure to enforce this Agreement or any provision hereof, or for damages by reason of any alleged breach of this Agreement or of any provision hereof, or for a declaration of rights hereunder (including, without limitation, arbitration), the prevailing party in any such action or proceeding shall be entitled to receive from the other party all costs and expenses, including without limitation reasonable attorneys' fees, incurred by the prevailing party in connection with such action or proceeding.

**26. CONSTRUCTION OF AGREEMENT.** This Agreement has been negotiated by the parties and its provisions will not be presumptively construed for or against the other party. The

headings and Section titles in this Agreement are for convenience only, and will not affect the construction or interpretation of this Agreement.

**27. NO THIRD PARTY BENEFICIARIES.** Except as expressly provided in this Agreement, nothing in this Agreement shall confer upon any person other than the parties and their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever.

**28. COUNTERPARTS.** The parties may execute this Agreement in one or more counterparts, each of which shall be an original, and which together shall constitute one instrument.

**29. ANTI-TRUST.** By entering into this Agreement, the Contractor conveys, sells, assigns, and transfers to the County all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust law of the United States and Fauquier County, relating to the particular goods or services purchased or acquired by the County under said Agreement. Consistent and continued tie bidding could cause rejection of bids by the Purchasing Agent and/or investigation for Anti-Trust violations.

**30. DEFAULT:** In case of failure to deliver goods or services in accordance with this Agreement terms and conditions, the County, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to other remedies which the County may have.

**31. ANTI-DISCRIMINATION:** Contractor certifies to the County that Contractor will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and Section 2.2-4311 of the *Virginia Public Procurement Act*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the Agreement on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, §2.2-4343.1(E)).

In every Agreement over \$10,000 the provisions in A and B below apply:

A. During the performance of this Agreement, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Contractor agrees to post in conspicuous places, available to employees

and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.

B. The Contractor will include the provisions of A. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

32. **DRUG-FREE WORKPLACE.** During the performance of this Agreement, Contractor agrees to (i) provide a drug-free workplace for Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

33. **USE OF AGREEMENT BY OTHER PUBLIC BODIES.** Except as prohibited by the current Code of Virginia, this Agreement may be extended, with the written authorization of the Contractor to other Public Bodies of the Commonwealth of Virginia and all currently active members of the Mid-Atlantic Purchasing Team, to permit their ordering of supplies and/or services at the prices and terms of the resulting Agreement under similar terms and conditions that warrant the Fees, etc. of this Agreement. If any other public body decides to use this Agreement, the Contractor must deal directly with that public body concerning the placement or orders, issuance of the purchase order, contractual disputes, fees, invoicing and payment. The County acts only as the "Contracting Agent" for these public bodies. Any resulting Agreement with other public bodies shall be governed by the laws of that specific entity. It is the Contractor's responsibility to notify the public bodies of the availability of the Agreement.

County shall not be held liable for any costs or damage incurred by another public body as a result of any award extended to that public body by Contractor.

34. **AUDIT.** Contractor agrees to retain all books, records and other documents relative to this Agreement for five (5) years after final payment, or until audited by the County, whichever is sooner. County auditors or County's agents shall have full access to and right to examine the relative said materials during said period.

35. **COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND FEDERAL IMMIGRATION LAW.** During the term of this Agreement, Contractor does not, and shall not during the performance of this Agreement for goods and services in the Commonwealth of

Virginia, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

36. **VIRGINIA STATE CORPORATION COMMISSION**. If required by law, Contractor shall maintain a valid certificate of authority or registration to transact business in Virginia with the Virginia State Corporation Commission as required by Section 13.1 or Title 50 of the Code of Virginia, during the term of this Agreement or Agreement renewal. Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth to be revoked or cancelled at any time during the terms of this Agreement. If Contractor fails to remain in compliance with the provisions of this section, this Agreement may become void.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their authorized representatives as of the Effective Date.

<b>ADVANCED DATA PROCESSING, INC., A SUBSIDIARY OF CONTRACTOR CORPORATION, a DELAWARE CORPORATION</b>	<b>FAUQUIER COUNTY</b>
---	------------------------

By:

Name:  
Title:

  
MICHAEL W. WALLACE  
CFO / CFO

By:

Name:  
Title:

  
Susan R. Monaco  
Fauquier County Procurement Manager

**Exhibit A**  
**Scope of Services**

***Base Services and Obligations:***

- A. Contractor shall provide revenue cycle management services for County as described below. Contractor shall, during the Term:
1. Prepare and submit initial claims and bills for County promptly upon receipt thereof, and prepare and submit secondary claims and bills promptly after identification of the need to submit a secondary claim.
  2. Assist County in identifying and transmitting necessary documentation in order to process and bill the accounts.
  3. Direct payments to a lockbox or bank account designated by County, to which County alone will have signature authority.
  4. Pursue appeals of denials, partial denials and rejections when deemed appropriate by Contractor.
  5. Respond to and follow up with Payors and respond to messages or inquiries from a Payor.
  6. Provide appropriate storage and data back-up for records pertaining to County's bills and collections hereunder, accessible to County at reasonable times.
  7. Maintain records of services performed and financial transactions.
  8. Meet, at least quarterly, with representatives of County to discuss results, problems and recommendations.
  9. Provide any County-designated collection agency with the data necessary for collection services to be performed when an account is referred to such agency.
  10. Contractor will support the provider in filing and maintaining required documentation and agreements with commonly-used Payors (e.g. Medicare, Medicaid, Champus, etc.). The Provider will maintain responsibility for enrollment, required documentation, and agreements with Out of State Payors, such as Out of State Medicaid programs, and other payors not commonly billed
  11. Provide reasonably necessary training periodically, as requested by County, to County's emergency medical personnel regarding the gathering of the necessary information and proper completion of run reports.

12. Utilize up-to-date knowledge and information with regard to coding requirements and standards, to comply with applicable federal, state and local regulations.
13. Provide a designated liaison for County, patient and other Payor concerns.
14. Provide a toll free telephone number for patients and other Payors to be answered as designated by County. Contractor is responsible for providing Internet-based access for patient access to accounts.
15. Facilitate proper security of confidential information and proper shredding of disposed materials containing such information.
16. Establish arrangements with hospitals to obtain/verify patient insurance and contact information.
17. Respond to any County, Payor or patient inquiry or questions promptly.
18. Maintain appropriate accounting procedures for reconciling deposits, receivables, billings, patient accounts, adjustments and refunds.
19. Provide reasonable access to the County for requested information in order for County to perform appropriate and periodic audits. Reasonable notice will be given to Contractor for any planned audit and will be conducted during normal business hours of Contractor, all at the County's expense.
20. Provide timely reports facilitating required aspects of monitoring, evaluating, auditing and managing the Services provided.
21. Provide refund requests and documentation substantiating each refund to the County for processing.
22. Assign billing to patient account numbers providing cross-reference to County's assigned transport numbers.
23. Maintain responsibility for obtaining missing or incomplete insurance information.
24. Provide accurate coding of medical claims based on information provided by County.
25. Negotiate and arrange modified payment schedules for individuals unable to pay full amount when billed.

26. Maintain accounts and actively pursue collections for a period not to exceed 180 days (6 months) after the last collection action unless in dispute or litigation with 3<sup>rd</sup> party payor.

27. Forward all documents and data on uncollectible accounts to the County with a request to write off the account.

28. Permit real-time read only electronic look-up access by County to Contractor's Billing Service to obtain patient data and billing information.

29. Maintain records in an electronic format that is readily accessible by County personnel and that meets federal and state requirements for maintaining patient medical records.

30. Create, implement and comply with a Compliance Plan consistent with the Compliance Program Guidance for Third Party Medical Billing Companies 63 FR 70138; (December 18, 1998) promulgated by the Office of Inspector General of the Department of Health and Human

**B. *County's Responsibilities and Obligations:***

1. From each person who receives EMS from County ("Patient"), County shall use its best efforts to obtain and forward the following information ("Patient Information") to Contractor:

(i) the Patient's full name and date of birth;

(ii) the mailing address (including zip code) and telephone number of the Patient or other party responsible for payment ("Guarantor");

(iii) the Patient's social security number;

(iv) the name and address of the Patient's health insurance carrier, name of policyholder or primary covered party, and any applicable group and identification numbers;

(v) the auto insurance carrier address and/or agent's name and phone number if an automobile is involved;

(vi) the employer's name, address and Workers Compensation Insurance information if the incident is work related;

(vii) the Patient's Medicare or Medicaid HIC numbers if applicable;

(viii) the Patient's or other responsible party's signed payment authorization and release of medical authorization form or other documentation sufficient to comply with applicable signature requirements;

(ix) the call times, transporting unit, and crew members with their license level, i.e. EMT-B, EMT-I, or EMT-P;

(x) odometer readings or actual loaded miles flown such that loaded miles may be calculated;

(xi) physician certification statements (PCS) for non-emergency transports that are to be billed to Medicare pursuant to CMS regulations; and

(xii) any other information that Contractor may reasonably require to bill the Patient or other Payor.

2. County represents and warrants that all information provided to Contractor shall be accurate and complete. Contractor shall have no obligation to verify the accuracy of such information, and County shall be solely responsible for such accuracy. County agrees to indemnify and hold Contractor, its agents, and employees harmless from any and all liabilities and costs, resulting from (a) any inaccurate or misleading information provided to Contractor that results in the actual or alleged submission of a false or fraudulent claim or (b) any other actual or alleged violation by County of local, state or federal laws, including but not limited laws applicable to Medicare, Medicaid or any other public or private Payor or enforcement agency.

3. County will provide Contractor with necessary documents required by third parties to allow for the electronic filing of claims by Contractor on County's behalf.

4. County will provide Contractor with its approved billing policies and procedures, including dispatch protocols, fee schedules and collection protocols. County will be responsible for engaging any third party collection service for uncollectible accounts after Contractor has exhausted its collection efforts.

5. County will process refunds identified by Contractor for account overpayments in a timely manner and provide confirmation, including copies of checks and other materials sent to the Contractor

6. County will provide a lock box or bank account address to Contractor and will instruct the lock box or bank custodian agency to forward all documents to Contractor for processing.

7. County will provide Contractor with daily bank balance reporting capabilities via the bank's designated web site.

8. County will cooperate with Contractor in all matters to ensure proper compliance with laws and regulations.

9. County represents and warrants that all of its employees, personnel and independent contractors involved in the delivery of EMS or otherwise performing services for County: (i) hold the licensure or certification required to perform such services, (ii) have not been convicted of a criminal offense related to health care or been listed as debarred, excluded or otherwise ineligible for participation in a Federal health care program and (iii) are not excluded persons

listed on any of the following: (a) the Office of the Inspector General List of Excluded Individuals and Entities; (b) the General Services Administration's Excluded Parties List; and (c) the Office of Foreign Asset Control's Specially Designated Nationals List.

10. County agrees that it will forward to Contractor copies of checks, or other payment documentation requested by Contractor relating to the subject matter of this Agreement, within 10 days of the date of receipt of those payments.

11. County agrees to notify Contractor in the event that their Electronic Patient Care Reporting (ePCR) vendor performs any system upgrades. Notification may be made in writing to [support@Intermedix.com](mailto:support@Intermedix.com).

**Exhibit B**  
**Business Associate Agreement**

This Business Associate Agreement ("BA Agreement") supplements and is made part of the Underlying Agreement (as defined below).

This BA Agreement is entered into between Fauquier County ("Covered Entity") and Advanced Data Processing, Inc., a subsidiary of Contractor Corporation, a Delaware Corporation ("Business Associate"), effective as of the Effective Date of the Underlying Agreement.

WHEREAS, Covered Entity and Business Associate have entered into, or plan to enter into, a separate agreement, entitled Agreement for Ambulance Billing and Related Professional Services, as of the Effective Date, or other documented arrangement (the "Underlying Agreement"), pursuant to which Business Associate may provide services for Covered Entity that require Business Associate to access, create and/or use Protected Health Information ("PHI") that is confidential under state and/or federal law; and

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed by Covered Entity to Business Associate, or collected or created by Business Associate pursuant to the Underlying Agreement, in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), and the regulations promulgated there under, including, without limitation, the regulations codified at 45 CFR Parts 160 and 164 ("HIPAA Regulations"); the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009, and its implementing regulations and guidance issued by the Secretary of the Department of Health and Human Services (the "Secretary") (the "HITECH Act"); and other applicable state and federal laws, all as amended from time to time, including as amended by the Final Rule issued by the Secretary on January 17, 2013 titled "Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules"; and

WHEREAS, the HIPAA Regulations require Covered Entity to enter into an agreement with Business Associate meeting certain requirements with respect to the Use and Disclosure of PHI, which are met by this BA Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and the exchange of information pursuant to this BA Agreement, the parties agree as follows:

1. Definitions.

Capitalized terms used herein without definition shall have the meanings ascribed to them in the HIPAA Regulations or the HITECH Act, as applicable, unless otherwise defined herein.

2. Obligations of Business Associate.

a. Permitted Uses and Disclosures. Business Associate shall only Use or Disclose PHI for the purposes of (i) performing Business Associate's obligations under the Underlying Agreement and as permitted by this BA Agreement; or (ii) as permitted or Required By Law; or (iii) as otherwise permitted by this BA Agreement. Business Associate shall not Use or further Disclose PHI other than as permitted or required by this BA Agreement or as Required By Law. Further, Business Associate shall not Use or Disclose PHI in any manner that would constitute a violation of the HIPAA Regulations or the HITECH Act if so used by Covered Entity, except that Business Associate may Use PHI (i) for the proper management and administration of Business Associate; or (ii) to carry out the legal responsibilities of Business Associate. Business Associate may Disclose PHI for the proper management and administration of Business Associate, to carry out its legal responsibilities or for payment purposes as specified in 45 CFR § 164.506(c)(1) and (3), including but not limited to Disclosure to a business associate on behalf of a covered entity or health care provider for payment purposes of such covered entity or health care provider, with the expectation that such parties will provide reciprocal assistance to Covered Entity, provided that with respect to any such Disclosure either: (i) the Disclosure is Required By Law; or (ii) for permitted Disclosures when Required By Law, Business Associate shall obtain a written agreement from the person to whom the PHI is to be Disclosed that such person will hold the PHI in confidence and will not use and further disclose such PHI except as Required By Law and for the purpose(s) for which it was Disclosed by Business Associate to such person, and that such person will notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

b. Appropriate Safeguards. Business Associate shall implement administrative, physical and technical safeguards that (i) reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity; and (ii) prevent the Use or Disclosure of PHI other than as contemplated by the Underlying Agreement and this BA Agreement.

c. Compliance with Security Provisions. Business Associate shall: (i) implement and maintain administrative safeguards as required by 45 CFR § 164.308, physical safeguards as required by 45 CFR § 164.310 and technical safeguards as required by 45 CFR § 164.312; (ii) implement and document reasonable and appropriate policies and procedures as required by 45 CFR § 164.316; and (iii) be in compliance with all requirements of the HITECH Act related to security and applicable as if Business Associate were a "covered entity," as such term is defined in HIPAA.

d. Compliance with Privacy Provisions. Business Associate shall only Use and Disclose PHI in compliance with each applicable requirement of 45 CFR § 164.504(e). Business Associate shall comply with all requirements of the HITECH Act related to privacy and applicable as if Business Associate were a "covered entity," as such term is defined in HIPAA. To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).

e. Duty to Mitigate. Business Associate agrees to mitigate, to the extent practicable and mandated by law, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this BA Agreement.

f. Encryption. To facilitate Business Associate's compliance with this BA Agreement and to assure adequate data security, Covered Entity agrees that all PHI provided or transmitted to Business Associate pursuant to the Underlying Agreement shall be provided or transmitted in a manner which renders such PHI unusable, unreadable or indecipherable to unauthorized persons, through the use of a technology or methodology specified by the Secretary in the guidance issued under Section 13402(h)(2) of the HITECH Act. Covered Entity acknowledges that failure to do so could contribute to or permit a Breach triggering notification obligations under the HITECH Act and further agrees that Business Associate shall have no liability for any Breach caused by such failure.

3. Reporting.

a. Security Incidents and/or Unauthorized Use or Disclosure. Business Associate shall report to Covered Entity a successful Security Incident or any Use and/or Disclosure of PHI other than as provided for by this BA Agreement or permitted by applicable law within a reasonable time of becoming aware of such Security Incident and/or unauthorized Use or Disclosure (but not later than ten (10) days thereafter), in accordance with the notice provisions set forth herein. Business Associate shall take (i) prompt action to cure any such deficiencies as reasonably requested by Covered Entity; and (ii) any action pertaining to such Security Incident and/or unauthorized Use or Disclosure required by applicable federal and state laws and regulations. If such successful Security Incident or unauthorized Use or Disclosure results in a Breach as defined in the HITECH Act, then Business Associate shall comply with the requirements of Section 3.b below.

b. Breach of Unsecured PHI. The provisions of this Section 3.b are effective with respect to the Discovery of a Breach of Unsecured PHI occurring on or after September 23, 2009. With respect to any unauthorized acquisition, access, Use or Disclosure of Covered Entity's PHI by Business Associate, its agents or subcontractors, Business Associate shall (i) investigate such unauthorized acquisition, access, Use or Disclosure; (ii) determine whether such unauthorized acquisition, access, Use or Disclosure constitutes a reportable Breach under the HITECH Act; and (iii) document and retain its findings under clauses (i) and (ii). If Business Associate Discovers that a reportable Breach has occurred, Business Associate shall notify Covered Entity of such reportable Breach in writing within thirty (30) days of the date Business Associate Discovers such Breach. Business Associate shall be deemed to have discovered a Breach as of the first day that the Breach is either known to Business Associate or any of its employees, officers or agents, other than the person who committed the Breach, or by exercising reasonable diligence should have been known to Business Associate or any of its employees, officers or agents, other than the person who committed the Breach. To the extent the information is available to Business Associate, Business Associate's written notice shall include the information required by 45 CFR § 164.410(c). Business Associate shall promptly supplement the written report with additional information regarding the Breach as it obtains such information. Business Associate shall cooperate with Covered Entity in meeting Covered Entity's obligations under the HITECH Act with respect to such Breach.

4. Business Associate's Agents. To the extent that Business Associate uses one or more subcontractors or agents to provide services under the Underlying Agreement, and such subcontractors or agents receive or have access to PHI, Business Associate shall sign an

agreement with such subcontractors or agents containing substantially the same provisions as this BA Agreement.

5. Rights of Individuals.

a. Access to PHI. Within ten (10) days of receipt of a request by Covered Entity, Business Associate shall make PHI maintained in a Designated Record Set available to Covered Entity or, as directed by Covered Entity, to an Individual to enable Covered Entity to fulfill its obligations under 45 CFR § 164.524. Subject to Section 5.b below, (i) in the event that any Individual requests access to PHI directly from Business Associate in connection with a routine billing inquiry, Business Associate shall directly respond to such request in compliance with 45 CFR § 164.524; and (ii) in the event such request appears to be for a purpose other than a routine billing inquiry, Business Associate shall forward a copy of such request to Covered Entity and shall fully cooperate with Covered Entity in responding to such request. In either case, a denial of access to requested PHI shall not be made without the prior written consent of Covered Entity.

b. Access to Electronic Health Records. If Business Associate is deemed to use or maintain an Electronic Health Record on behalf of Covered Entity with respect to PHI, then, to the extent an Individual has the right to request a copy of the PHI maintained in such Electronic Health Record pursuant to 45 CFR § 164.524 and makes such a request to Business Associate, Business Associate shall provide such Individual with a copy of the information contained in such Electronic Health Record in an electronic format and, if the Individual so chooses, transmit such copy directly to an entity or person designated by the Individual. Business Associate may charge a fee to the Individual for providing a copy of such information, but such fee may not exceed Business Associate's labor costs in responding to the request for the copy. The provisions of 45 CFR § 164.524, including the exceptions to the requirement to provide a copy of PHI, shall otherwise apply and Business Associate shall comply therewith as if Business Associate were the "covered entity," as such term is defined in HIPAA. At Covered Entity's request, Business Associate shall provide Covered Entity with a copy of an Individual's PHI maintained in an Electronic Health Record in an electronic format and in a time and manner designated by Covered Entity in order for Covered Entity to comply with 45 CFR § 164.524, as amended by the HITECH Act.

c. Amendment of PHI. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.

d. Accounting Rights. This Section 5.d is subject to Section 5.e below. Business Associate shall make available to Covered Entity, in response to a request from an Individual, information required for an accounting of disclosures of PHI with respect to the Individual, in accordance with 45 CFR § 164.528, incorporating exceptions to such accounting designated under such regulation. Such accounting is limited to disclosures that were made in the six (6) years prior to the request and shall not include any disclosures that were made prior to the compliance date of the HIPAA Regulations. Business Associate shall provide such information as is necessary to provide an accounting within ten (10) days of Covered Entity's request. Such accounting must be provided without cost to the Individual or to Covered Entity if it is the first

accounting requested by an Individual within any twelve (12) month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if Business Associate informs Covered Entity and Covered Entity informs the Individual in advance of the fee, and the Individual is afforded an opportunity to withdraw or modify the request. Such accounting obligations shall survive termination of this BA Agreement and shall continue as long as Business Associate maintains PHI.

e. Accounting of Disclosures of Electronic Health Records. The provisions of this Section 5.e shall be effective on the date specified in the HITECH Act. If Business Associate is deemed to use or maintain an Electronic Health Record on behalf of Covered Entity, then, in addition to complying with the requirements set forth in Section 5.d above, Business Associate shall maintain an accounting of any Disclosures made through such Electronic Health Record for Treatment, Payment and Health Care Operations, as applicable. Such accounting shall comply with the requirements of the HITECH Act. Upon request by Covered Entity, Business Associate shall provide such accounting to Covered Entity in the time and manner specified by Covered Entity and in compliance with the HITECH Act. Alternatively, if Covered Entity responds to an Individual's request for an accounting of Disclosures made through an Electronic Health Record by providing the requesting Individual with a list of all business associates acting on behalf of Covered Entity, then Business Associate shall provide such accounting directly to the requesting Individual in the time and manner specified by the HITECH Act.

f. Agreement to Restrict Disclosure. If Covered Entity is required to comply with a restriction on the Disclosure of PHI pursuant to Section 13405 of the HITECH Act, then Covered Entity shall, to the extent necessary to comply with such restriction, provide written notice to Business Associate of the name of the Individual requesting the restriction and the PHI affected thereby. Business Associate shall, upon receipt of such notification, not Disclose the identified PHI to any health plan for the purposes of carrying out Payment or Health Care Operations, except as otherwise required by law. Covered Entity shall also notify Business Associate of any other restriction to the Use or Disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522.

6. Remuneration and Marketing.

a. Remuneration for PHI. This Section 6.a shall be effective with respect to exchanges of PHI occurring six (6) months after the date of the promulgation of final regulations implementing the provisions of Section 13405(d) of the HITECH Act. On and after such date, Business Associate agrees that it shall not, directly or indirectly, receive remuneration in exchange for any PHI of Covered Entity except as otherwise permitted by the HITECH Act.

b. Limitations on Use of PHI for Marketing Purposes. Business Associate shall not Use or Disclose PHI for the purpose of making a communication about a product or service that encourages recipients of the communication to purchase or use the product or service, unless such communication: (i) complies with the requirements of subparagraph (i), (ii) or (iii) of paragraph (1) of the definition of marketing contained in 45 CFR § 164.501; and (ii) complies with the requirements of subparagraphs (A), (B) or (C) of Section 13406(a)(2) of the HITECH Act, and implementing regulations or guidance that may be issued or amended from time to time.

Covered Entity agrees to assist Business Associate in determining if the foregoing requirements are met with respect to any such marketing communication.

7. Governmental Access to Records. Business Associate shall make its internal practices, books and records relating to the Use and Disclosure of PHI available to the Secretary for purposes of determining Covered Entity's compliance with the HIPAA Regulations and the HITECH Act. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity of all requests served upon Business Associate for information or documentation by or on behalf of the Secretary. Business Associate shall provide to Covered Entity a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary.

8. Minimum Necessary. To the extent required by the HITECH Act, Business Associate shall limit its Use, Disclosure or request of PHI to the Limited Data Set or, if needed, to the minimum necessary to accomplish the intended Use, Disclosure or request, respectively. Effective on the date the Secretary issues guidance on what constitutes "minimum necessary" for purposes of the HIPAA Regulations, Business Associate shall limit its Use, Disclosure or request of PHI to only the minimum necessary as set forth in such guidance.

9. State Privacy Laws. Business Associate shall comply with state laws to extent that such state privacy laws are not preempted by HIPAA or the HITECH Act.

10. Termination.

a. Breach by Business Associate. If Covered Entity knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate's obligations under this BA Agreement, then Covered Entity shall promptly notify Business Associate. With respect to such breach or violation, Business Associate shall take reasonable steps to cure such breach or end such violation, if possible. If such steps are either not possible or are unsuccessful, upon written notice to Business Associate, Covered Entity may terminate its relationship with Business Associate.

b. Breach by Covered Entity. If Business Associate knows of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of Covered Entity's obligations under this BA Agreement, then Business Associate shall promptly notify Covered Entity. With respect to such breach or violation, Covered Entity shall take reasonable steps to cure such breach or end such violation, if possible. If such steps are either not possible or are unsuccessful, upon written notice to Covered Entity, Business Associate may terminate its relationship with Covered Entity.

c. Effect of Termination. Upon termination of this BA Agreement for any reason, Business Associate shall either return or destroy all PHI, as requested by Covered Entity, that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI. If Covered Entity requests that Business Associate return PHI, such PHI shall be returned in a mutually agreed upon format and timeframe. If Business Associate reasonably determines that return or destruction is not feasible, Business Associate shall continue to extend the protections of this BA Agreement to such PHI, and limit further uses and

disclosures of such PHI to those purposes that make the return or destruction of such PHI not feasible. If Business Associate is asked to destroy the PHI, Business Associate shall destroy PHI in a manner that renders the PHI unusable, unreadable or indecipherable to unauthorized persons as specified in the HITECH Act.

11. Amendment. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this BA Agreement may be required to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement any new or modified standards or requirements of HIPAA, the HIPAA Regulations, the HITECH Act and other applicable laws relating to the security or privacy of PHI. Upon the request of Covered Entity, Business Associate agrees to promptly enter into negotiation concerning the terms of an amendment to this BA Agreement incorporating any such changes.

12. No Third Party Beneficiaries. Nothing express or implied in this BA Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

13. Effect on Underlying Agreement. In the event of any conflict between this BA Agreement and the Underlying Agreement, the terms of this BA Agreement shall control.

14. Survival. The provisions of this BA Agreement shall survive the termination or expiration of the Underlying Agreement.

15. Interpretation. This BA Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA Regulations and the HITECH Act. The parties agree that any ambiguity in this BA Agreement shall be resolved in favor of a meaning that complies and is consistent with such laws.

16. Governing Law. To the extent this BA Agreement is not governed by federal law, this BA Agreement shall be governed by and construed in accordance with the laws of the State in which Covered Entity is located, exclusive of its rules governing choice of law and conflict of laws.

17. Notices. All notices required or permitted under this BA Agreement shall be in writing and sent to the other party as directed below or as otherwise directed by either party, from time to time, by written notice to the other. All such notices shall be deemed validly given upon receipt of such notice by certified mail, postage prepaid, facsimile transmission, e-mail or personal or courier delivery:

If to Covered Entity:

Fauquier County  
320 Hospital Drive, Suite 32  
Warrenton, VA 20186  
Attn: Terrilyn S. Pete, Financial Services Division Chief  
Tel: 540-422-8331  
Fax: 540-422-8326  
Email: terrilyn.pete@fauquiercounty.gov

**If to Business Associate:**

**Contractor Corporation  
6451 N. Federal Highway, Suite 1000  
Ft. Lauderdale, FL 33308  
Attn: Chief Compliance Officer  
Telephone no: 954-308-8700  
Facsimile no: 954-308-8725**