

COPY

Change Order No. 4

Date of Issuance: 07/27/2009 Effective Date: 07/07/2009

Project: Deep Creek Watershed Dam 5D	Owner Yadkin County:	Owner's Contract No.:
Contract:	Date of Contract:	
Contractor: Haymes Brothers, Inc.	Engineer's Project No.: 08210021.01	

The Contract Documents are modified as follows upon execution of this Change Order:

Description: **Additional expense of developing a stable grout mix with Type 3 Cement and drilling and grouting additional holes using the newly developed grout mix on a time and materials basis in accordance with the agreed to rates in Work Directive 01 issued on July 6, 2009.**

Attachments: (List documents supporting change):

Work Directive 01

Time and Materials cost documentation from Layne

Request for Change Order from Haymes Brothers, Inc.

CHANGE IN CONTRACT PRICE:

CHANGE IN CONTRACT TIMES:

Original Contract Price:

\$16,777,427.50

Original Contract Times: Working days Calendar days

Substantial completion (days or date): 575 days

Ready for final payment (days or date): 650 days

[Increase] [Decrease] from previously approved Change Orders No. 01 to No. 03,

\$2,775.00

[Increase] [Decrease] from previously approved Change Orders No. 01 to No. 03 :

Substantial completion (days): 46

Ready for final payment (days): 46

Contract Price prior to this Change Order:

\$16,780,202.50

Contract Times prior to this Change Order:

Substantial completion (days or date): 621

Ready for final payment (days or date): 696

[Increase] [Decrease] of this Change Order:

\$42,411.62

[Increase] [Decrease] of this Change Order:

Substantial completion (days or date): 0

Ready for final payment (days or date): 0

Contract Price incorporating this Change Order:

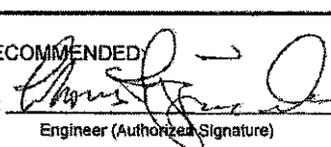
\$16,822,614.12

Contract Times with all approved Change Orders:

Substantial completion (days or date): 621 days

Ready for final payment (days or date): 696 days

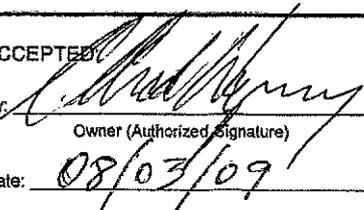
RECOMMENDED

By: 

Engineer (Authorized Signature)

Date: 07/27/2009

ACCEPTED

By: 

Owner (Authorized Signature)

Date: 08/03/09

ACCEPTED:

By: _____

Contractor (Authorized Signature)

Date: _____

Approved by Funding Agency (if applicable): _____

Date: _____

Date: August 3, 2009

General Fund

Dept: Public Buildings

Description	Account Number	Original Budget	Increase/ (Decrease)	Amended Budget
Building and Grounds Maintenance	1054260-53010	47,611.00	18,000.00	65,611.00
Appropriated Fund Balance	1044000-49000	1,329,762.00	18,000.00	1,347,762.00

To amend for the cleaning of the soil where a gasoline tank was removed from underground.

BILLING SERVICES AGREEMENT

THIS BILLING SERVICES AGREEMENT (hereinafter "Agreement"), is entered into this 1st day of September, 2009 between EMS MANAGEMENT & CONSULTANTS, INC. (hereinafter "EMS|MC") and Yadkin County EMS (hereinafter "Client").

WITNESSETH:

WHEREAS, EMS|MC is an ambulance billing service company with experience in providing medical billing and collection services to medical transport providers, including fire and rescue and emergency medical service (EMS) providers; and

WHEREAS, Client is normally engaged in the business of providing emergency medical services (hereinafter "Services"), and billable medical transportation services (hereinafter "transportation"); and

WHEREAS, Client wishes to retain EMS|MC to provide medical billing and collection services and EMS|MC wishes to provide those services to Client, as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements described below and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

- 1. ENGAGEMENT.** During the term of this Agreement, EMS|MC shall provide routine billing, bill processing and fee collection services reasonably required and customary for Service providers of similar size and situation to Client. These services shall include: (1) preparing and submitting initial and secondary claims and bills for Client to insurers and others responsible for payment; (2) performing reasonable and diligent routine collection efforts to secure payments from primary and secondary payors and patients or other entities, (as EMS|MC deems appropriate); (3) issuing patient statements for all unpaid balances; and (4) referring accounts which have not been collected during EMS|MC normal billing cycle to an outside collection agency if so directed by Client.

Accounts with outstanding balances after the insurance and/or third party payor has determined benefits due will be billed by EMS|MC to the patient.

EMS|MC will send follow-up bills, except as to those accounts on which an insurance carrier or third-party payor has accepted responsibility to pay. Once Client has submitted all necessary information, EMS|MC will bill all uninsured patients directly.

EMS|MC will provide Client with a monthly financial report, to the Client within 10 business days of the last business day of the month. The Report shall include both monthly and year-to-date billing and collection summary, check register report and deposit tickets. EMS|MC shall provide appropriate storage and data back-up for all records pertaining to Client's bills and collections hereunder, accessible to Client during reasonable business hours.

EMS|MC shall maintain records of all services performed and records of all financial transactions. EMS|MC shall retain all financial records not tendered or returned to Client on any termination hereof for at least seven (7) years, and retain all Medicare and Medicaid records for seven (7) years. EMS|MC will comply with all applicable State and Federal regulations applicable to third party billers pertaining to the maintenance of patient files, financial records and related reports and documents, including but not limited to confidentiality of records. This undertaking will expressly survive the termination of this Agreement. If so requested by Client, EMS|MC shall provide Client with written guidelines or a policy and procedural manual specific to Client reflecting the current regulatory and procedural requirements applicable to Client as a service provider in the State of North Carolina providing services to Medicare, Medicaid and other government funded program patients. EMS|MC will work with the Client's designated management consultants to assist and support said consultants ("Consulting Services"). Under no circumstances will EMS|MC offer advice on any tax related or legal matters.

EMS|MC shall notify Client of all patient complaints about clinical services within five (5) business days of receipt and notify Client of all patient complaints about billing within ten (10) days of receipt. EMS|MC shall directly advise Client of any notices of audit, requests for medical records or other contacts or inquiries out of the normal course of business from representatives of Medicare, Medicaid or private payors, with which Client contracts ("Payor Inquiries"), and advise Client of any significant pattern of

payor denials or downcodings for services billed by EMS|MC on Client's behalf ("Denial Patterns"). The Client will be notified of Payor Inquiries within ten (10) business days of EMS|MC's receipt of same.

EMS|MC is appointed as the agent of Client under this Agreement solely for the express purposes of this Agreement relating to billing and receiving payments and mail, receiving and storing documents, and communicating with hospitals and other entities to facilitate its duties. EMS|MC will have no authority to pledge credit, contract, or otherwise act on behalf of Client except as expressly set forth herein.

As to all payments received from Medicare, Medicaid and other government funded programs, the parties specifically acknowledge that EMS|MC will only prepare claims for Client and will not negotiate checks payable or divert electronic fund transfers to Client from Medicare, Medicaid or any other government funded program. All Medicare, Medicaid and any other government funded program payments, including all electronic fund transfers, will be deposited directly into a bank account designated by the client to receive such payments and as to such account only Client, through its officers and directors, shall have access.

EMS|MC will pay \$.44 per claim, based on Client's contract terms with ESO Solutions in effect as of the date of this Agreement and as set out in Exhibit 1.

2. COMPENSATION OF EMS|MC.

- (a) Client shall pay a fee for the services of EMS|MC hereunder, on a monthly basis, in an amount equal to eight percent (8%) of "Net Collections" as defined below (the "Compensation"). Net Collections shall mean all cash and check amounts including electronic fund transfers (EFT's) received by EMS|MC from payers, patients, attorney's offices, court settlements, collection agencies, government institutions, group health insurance plans, private payments, credit cards, healthcare facilities or any person or entity submitting funds on a patient's account, OR any amounts paid directly to the Client with or without the knowledge of EMS|MC that are paid, tendered, received or collected each month for Client's

transports, less refunds processed or any other necessary adjustments to those amounts.

EMS|MC shall submit an invoice to Client by the 10th day of each month for the Compensation due to EMS|MC for the previous calendar month. The Compensation amount reflected on the invoice shall be paid in full by the 20th day of the month in which the invoice is first presented to Client. All invoices are to be paid directly from the Client's banking institution to EMS|MC via paper check or direct deposit to EMS|MC's bank account.

FEES and CHARGES - A one-time late fee of 5% shall be added to any invoices that remain unpaid by the 25th day of the calendar month in which such invoice is first presented to Client. Interest shall begin to accrue on all unpaid balances starting thirty (30) days after presentment of said invoice for any unpaid balances at the rate of 1½% per month. Client shall be responsible for all costs of collection incurred by EMS|MC or others in attempting to collect amounts due from client, including reasonable attorney fees.

3. RESPONSIBILITIES OF CLIENT.

- (a) Client will provide EMS|MC with complete demographic and charge information necessary for the processing of professional and/or technical component billing to third parties and/or patients, including the following: patient identification (name, address, phone number, birth date, gender); guarantor identification and address; insurance information; report of services; special claim forms; pre-authorization numbers; and such additional information as is requested by EMS|MC.
- (b) In addition, Client shall provide complete medical record documentation necessary to insure proper billing and secure claim payment; secure authorizations and signatures, including consent to treat, assignment of benefits and release of information, and physician certification statements (PCS) forms for all non-emergency transports. The client will report to EMS|MC within ten (10) business days, payments received directly by client; and

promptly notify EMS|MC of any cases requiring special handling or billing. The client must provide Patient Care Reports (PCR) in a timely manner in order to achieve higher performance. Client will implement any reasonable changes that EMS|MC determines to be necessary for the accurate completion of billing forms and related documentation; execute all forms required by Medicare, Medicaid, CHAMPUS, and any other payor or insurance carrier to allow EMS|MC to carry out its billing and other duties under this Agreement; and maintain client's own files with all original or source documents, as required by law. Client acknowledges that EMS|MC is not the agent of Client for storage of source documentation. Client will provide EMS|MC with a copy of any existing billing policy manuals or guidelines, Medicare or Medicaid reports, or any other record or document related to services or billing of client accounts.

- (c) In addition the Client is to provide EMS|MC with accurate medical records for each incident or patient service rendered for reimbursement [i.e. the Ambulance Call Report (ACR) or Patient Care Report (PCR)]. The PCR record must thoroughly detail the patient's full medical condition at the time of service and include a chronological narrative of all services and treatment rendered. The Client attests that the PCR and any and all associated Medical Records, forms and certification statements provided to EMS|MC are true and accurate and contain only factual information observed and documented by the attending field technician during the course of the treatment and transport.
- (d) The Client will obtain any and all additional patient documentation required by Centers for Medicare and Medicaid Services ("CMS") or any other governmental or commercial payer for reimbursement consideration, including but not limited to a Physician Certification Statements (PCS) or other similar medical necessity forms or prior authorization statements as deemed necessary by the payer.

4. TERM OF AGREEMENT.

(a) This Agreement shall be effective upon execution and shall thereafter continue through August 31, 2013. This Agreement shall be binding upon the parties hereto and their assigns, representatives, heirs and successors. The Agreement shall automatically renew on the same terms and conditions as stated herein, for successive one (1) year terms, unless either party gives written notice of intent not to renew at least 60 days before expiration of any term. Notwithstanding anything herein to the contrary, this Agreement may be terminated under the provisions, provided below, either for cause or by notice after the initial term, as further defined herein.

(i) **Termination for Cause.** Notwithstanding paragraph 5(a), this Agreement may be terminated by either party at any time for cause based on a material breach of a term or condition hereof by the other party which is not remedied by the other party within thirty (30) days of written notice describing the breach in reasonable detail. "Cause" shall include the following:

- (1) Failure of Client to make timely payments due under this Agreement;
- (2) Any willful damage to property, business, reputation, or good will of the other party hereto;
- (3) Willful injury to any customer, independent contractor, employee or agent of the other party hereto;
- (4) Solicitation of business on behalf of a competitor or potential competitor of the other party hereto;
- (5) Harassment of any contractor or commitment of any act which otherwise creates an offensive work environment for contractors;

- (6) Inattention to or neglect of the duties to be performed by each party, which inattention or neglect is not the result of illness or accident;
- (7) Failure to practice in accordance with the appropriate policies, standards and procedures established by the respective parties;
- (8) Commitment of any unethical or immoral act which disparages the other party or could have the effect of disparaging the other party; or
- (9) Any breach of any material provision of this Agreement.

5. RESPONSIBILITIES UPON TERMINATION.

- (a) Provided Client has paid all amounts due hereunder, upon any termination of this Agreement, and during the period of any notice of termination, EMS|MC will make available to Client or its authorized representatives, paper and electronic tape copies of information regarding open accounts, including accounts referred to an outside collection agency, and non-proprietary information concerning payors and claims processing, (all without additional charge except for the cost of blank electronic tape and reasonable copy charges), and will otherwise furnish reasonable cooperation and assistance in any transition to Client, or its successor billing agent.
- (b) Following termination of this Agreement, for a period of ninety (90) days (the "Wind Down"), EMS|MC will continue its billing and collection efforts as to those accounts with dates of services prior to termination, subject to the terms and conditions of this Agreement, for the applicable fee set forth in paragraph 2(a). Client will continue to provide EMS|MC with copies of checks and payments on those accounts which were filed by EMS|MC under this agreement. EMS|MC shall have no further responsibilities as to such accounts after the Wind Down; however EMS|MC shall be

entitled to compensation as provided in paragraph 2(a) for such amounts filed by EMS|MC, regardless of whether such amounts are collected by client during or after the Wind Down period. In the event Client has an outstanding balance owed to EMS|MC which is more than 45 days in arrears at the time of termination, EMS|MC shall have no obligation to provide any services after the date of termination.

6. EXCLUSIVITY AND MISCELLANEOUS BILLING POLICIES.

- (a) This Agreement to provide billing and collection services is made with EMS|MC as Client's exclusive provider for all dates of service during the term hereof. The Client may not directly file, submit or invoice for any Services rendered while this Agreement is in effect.
- (b) In addition, Client agrees not to collect or accept payment for services from any patient unless the service requested does not meet coverage requirements under any insurance program in which the patient is enrolled or the patient is uninsured. Payments received directly by Client for these services must be reported to EMS|MC as provided in paragraph 3(b) and shall be treated as Net Collections for purposes of paragraph 2(a).
- (c) In compliance with CMS regulations, Medicare patients will not be charged by Client a higher rate or amount for identical covered services charged to other insurers or patients. Accordingly, only one fee schedule shall exist and be used in determining charges for all patients regardless of insurance coverage.
- (d) EMS|MC reserves the right not to submit a claim for reimbursement on any patient in which the PCR and/or associated medical records are incomplete or appear to be inaccurate or do not contain enough information to substantiate or justify reimbursement. This includes missing patient demographic information, insurance information, physician certification statements (PCS) or any required crew and/or patient signatures, or otherwise contradictory medical information.

- (e) The Client shall implement and maintain a working compliance plan ("Compliance Plan") in accordance with the most current guidelines of the U.S. Department of Health and Human Services ("HHS"). The Compliance Plan must include, but not limited to, formal written policies and procedures and standards of conduct, designation of a compliance officer, quality assurance policy and effective training and education programs.
- (f) In accordance with the HHS Office of Inspector General ("OIG") Compliance Program Guidance for Third-Party Medical Billing Companies, EMS|MC is obligated to report misconduct to the government, if the billing company discovers credible evidence of the provider's continued misconduct or flagrant, fraudulent or abusive conduct. In the event of such evidence, EMS|MC has the right to refrain from (a) submitting any false or inappropriate claims, (b) terminate the contract and/or (c) report the misconduct to the appropriate authorities.

7. RESTRICTIVE COVENANT.

The Client agrees that both during the term of this Agreement and for a period beginning on the date of termination of this Agreement for any reason and ending three (3) years after the date of termination of this Agreement (the "Restricted Period"), Client shall not solicit or attempt to solicit or accept any work or employ any of EMS|MC's employees with whom Client had contact during the term of this Agreement, with the intent or purpose to receive from such employees the same or similar services which EMS|MC performed for Client during the term of this Agreement. Client has carefully read and considered the provisions of Paragraph 7 hereof, and having done so, agrees that the restrictions set forth in such paragraph (including, but not limited to, the time period) are fair and reasonable and are reasonably required for the protection of the legitimate interests of EMS|MC, its officers, directors, shareholders, and employees.

8. PRIVACY.

Confidentiality. All data and information furnished to EMS|MC by Client shall be regarded as confidential, shall remain the sole property of Client and shall be held in confidence and safekeeping by EMS|MC for the sole use of the parties and EMS|MC under the terms of this Agreement. EMS|MC agrees that except as provided otherwise herein, its officers, employees and agents will not disclose to any person, firm or entity other than Client or Client's designated legal counsel, accountants or practice management consultants any information about Client, its practice or billing, or any of the patients of Client unless required to do so by Federal, State or local law enforcement authorities within jurisdiction and/or acting under the law and/or under court orders.

9. GENERAL.

Status of Parties. Nothing contained in this Agreement shall be construed as establishing a partnership or joint venture relationship between EMS|MC and Client. EMS|MC and its employees and representatives shall be independent contractors, solely responsible for its performance under this Agreement and shall have no legal authority to bind Client.

Assignment. Neither this Agreement nor any rights or obligations hereunder shall be assigned by either party without prior written consent of the other party, except that this Agreement may be assigned without consent to the survivor in any merger or other business combination including either party, or to the purchaser of all or substantially all of the assets of either party.

Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, assigns, and legal representatives.

Notices. Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been given on the date delivered personally or deposited in

the United States Postal Service, certified mail, return receipt requested, with adequate postage affixed, addressed as follows:

Client:
Yadkin Co EMS
P.O. Box 998
Yadkinville NC, 27011

EMS/MC:
EMS Management & Consultants, Inc.
4731 Commercial Park Ct., Ste. B.
Clemmons, NC 27006

With Copy to:

Karen M. Wilson
Robinson & Lawing, LLP
101 N Cherry Street, Suite 720
Winston Salem, NC 27101

Either party may change its address for notices under this Agreement by giving written notice of such change to the other party in accordance with the terms of this paragraph.

Governing Law. This Agreement and the rights and obligations to the parties thereunder shall be construed and governed by the laws of the State of North Carolina and venue for any proceedings arising here under shall be in said state.

Integration of Terms. This instrument constitutes the entire agreement between the parties, and supersedes all prior negotiations, commitments, representations and undertakings of the parties with respect to its subject matter.

Amendment and Waiver. This Agreement may be amended or modified only by an instrument signed by all of the parties. A waiver of any provision of this Agreement must be in writing, designated as such, and signed by the party against whom enforcement of the waiver is sought.

The waiver of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent or other breach thereof.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed on the later of the dates set forth below.

EMS|MC:

CLIENT:

EMS Management & Consultants, Inc.

Yadkin County EMS

By: 

By: 

Title: President

Title: County Manager

Date: 7/30/09

Date: 8/3/09

412943.2

Business Associate Agreement

This Agreement between CLIENT, Transport and EMS Management & Consultants, LLC ("BILLING COMPANY") is executed for the purpose of ensuring that BILLING COMPANY carries out its obligations to CLIENT in compliance with the privacy and security regulations pursuant to Public Law 104-191 of August 21, 1996, known as the Health Insurance Portability and Accountability Act of 1996, Subtitle F – Administrative Simplification, Sections 261, et seq., as amended ("HIPAA").

This Agreement encompasses BILLING COMPANY'S assurance to protect the confidentiality, integrity, and security of any personally identifiable protected health information ("PHI") that is collected, processed or learned as a result of the services provided to CLIENT by BILLING COMPANY, including any such information stored and transmitted electronically, referred to as electronic protected health information ("e-PHI").

BILLING COMPANY agrees that it will:

1. Not use or further disclose PHI except as permitted under this Agreement or required by law;
2. Use appropriate and commercially reasonable safeguards to prevent use or disclosure of PHI except as permitted by this Agreement;
3. Work to mitigate, to the extent practicable, any harmful effect that is known to BILLING COMPANY of a use or disclosure of PHI by the BILLING COMPANY in violation of this Agreement.
4. Report to CLIENT any use or disclosure of PHI not provided for by this Agreement of which BILLING COMPANY becomes aware;
5. Require that any agents or subcontractors to whom BILLING COMPANY provides PHI, or who have access to PHI, agree to the same restrictions and conditions that apply to BILLING COMPANY with respect to such PHI;
6. Make PHI available to CLIENT and to the individual who has a right of access as required under HIPAA within 30 days of the request by Client to the individual;

7. Incorporate any amendments to PHI when notified to do so by CLIENT;
8. Provide an accounting of all uses or disclosures of PHI made by BILLING COMPANY as required under the HIPAA privacy rule within 60 days;
9. Make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services for purposes of determining BILLING COMPANY'S and CLIENT'S compliance with HIPAA;
10. At the termination of this Agreement, return or destroy all PHI received from, or created or received by BILLING COMPANY on behalf of CLIENT, and if return or destruction is not feasible, the protections of this agreement will continue to extend to such PHI.

The specific uses and disclosures of PHI that may be made by BILLING COMPANY on behalf of CLIENT include:

1. The preparation of invoices to patients, carriers, insurers and others responsible for payment or reimbursement of the services provided by CLIENT to its patients;
2. The preparation of reminder notices and documents pertaining to collections of overdue accounts;
3. The submission of supporting documentation to carriers, insurers and other payers to substantiate the health care services provided by CLIENT to its patients or to appeal denials of payment for same.
4. The uses required for the proper management of the BILLING COMPANY as a business associate.
5. Other uses or disclosures of PHI as permitted by HIPAA Privacy Rule.

BILLING COMPANY agrees to assume the following obligations regarding electronic Protected Health Information (e-PHI):

1. BILLING COMPANY agrees to implement commercially reasonable administrative, physical and technical safeguards designed to protect the confidentiality, integrity and availability of the e-PHI that it creates, receives, maintains or transmits on behalf of CLIENT.

2. BILLING COMPANY will require that any agent, including a subcontractor, to whom to it provides e-PHI that was created, received, maintained or transmitted on behalf of CLIENT agrees to implement commercially reasonable administrative, physical and technical safeguards designed to protect the confidentiality, integrity and availability of such e-PHI.

3. BILLING COMPANY agrees to alert CLIENT of any security incident (as defined by the HIPAA Security Rule) which it becomes aware, and the steps it has taken to mitigate any potential security compromise that may have occurred, and provide a report to CLIENT of any loss of data or other information system compromise as a result of the incident.

Notwithstanding any other provisions of this Agreement, this Agreement may be terminated by CLIENT, in its sole discretion, if CLIENT determines that BILLING COMPANY has violated a material term or provision of this Agreement pertaining to CLIENT'S obligations under the HIPAA privacy or security rules, or if BILLING COMPANY engages in conduct which would, if committed by CLIENT, would result in a material violation of the HIPAA privacy or security rules by CLIENT.

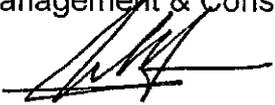
IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed on the later of the dates set forth below.

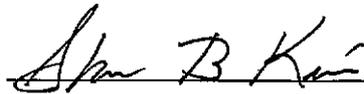
EMS|MC:

CLIENT:

EMS Management & Consultants, Inc.

Yadkin County EMS

By: 

By: 

Title: President

Title: County Manager

Date: 7/30/09

Date: 8/2/09

SUBSCRIPTION AGREEMENT

This Subscription Agreement (the "Agreement") is made as of the date of last execution below (the "Effective Date") and entered into by and between ESO Solutions, Inc., a Texas corporation with its principal place of business at 3005 South Lamar Blvd., Suite D 109-372, Austin, Texas 78704 (hereinafter referred to as "ESO"), and Yadkin County EMS, with its principal place of business at 201 east Cherry, Yadkinville North Carolina (hereinafter referred to as "Customer"), with reference to the following:

WHEREAS, ESO is in the business of providing electronic patient care reporting services to businesses and municipalities which provide emergency patient care, and Customer desires to obtain the services from ESO, all upon the terms and conditions set forth herein.

NOW THEREFORE, Customer and ESO hereby mutually agree as follows:

1. **Services.** ESO shall provide to Customer, during the Term, the "Services" selected by Customer on Exhibit A attached hereto.
2. **Term.** The Term of the Agreement shall commence on the Effective Date and shall terminate one year after the Effective Date. The Agreement shall automatically renew for successive renewal terms of one year each, unless one party gives the other party written notice that the Agreement will not renew, at least thirty (30) days prior to the end of the then-current Term.
3. **Subscription Fees, Invoices and Payment Terms.**
 - a. **Subscription Fees.** Customer shall pay to ESO the Subscription Fees for the Services as indicated on Exhibit A, and for ePCR, Customer shall pay an estimate of the annual Subscription Fees in accordance with subparagraph b. below. Customer will be invoiced for the yearly Subscription Fees on an annual basis, in advance, and all invoices shall be payable within thirty (30) days.
 - b. **Estimated Subscription Fees for ePCR.** Customer shall pay to ESO the annual Estimated Subscription Fees for the ePCR Suite as indicated in Exhibit A. At least once every year ESO may evaluate Customers average annual call volume and increase or decrease the Customer's next invoice based on changes in Customer call volume.
 - c. **Payment of Invoices.** Customer shall pay invoices received from ESO within thirty (30) days after the receipt of the invoice (the "Due Date").
 - d. **Disputed Invoices.** If Customer in good faith disputes any portion of any ESO invoice, Customer shall submit to ESO, by the Due Date, full payment of the undisputed portion of the invoice and written documentation identifying and substantiating the disputed amount. If Customer does not report a dispute within thirty (30) days following the Due Date of the applicable invoice, Customer shall have waived its right to dispute that invoice. Any disputed amounts determined to be payable to ESO shall be due within ten (10) days of the resolution of the dispute.

4. Termination.

- a. Termination by Customer for Cause. If ESO fails to perform a material obligation under this Agreement and does not remedy such failure within thirty (30) days following written notice from Customer (“ESO Default”), Customer may terminate this Agreement without any further liability except for the payment of all accrued but unpaid Subscription Fees. If ESO is unable to provide Service(s) for ninety (90) consecutive days due to a Force Majeure event as defined in Section 12a, *Force Majeure*, Customer may terminate the affected Service(s) without liability to ESO.
- b. Termination by ESO for Customer Default. ESO may terminate this Agreement with no further liability if (i) Customer fails to make payment as required under this Agreement and such failure remains uncorrected for five (5) days following written notice from ESO, or (ii) Customer fails to perform any other material obligation under this Agreement and does not remedy such failure within fifteen (15) days following written notice from ESO (hereinafter collectively referred to as “Customer Default”). In the event of a Customer Default, ESO shall have the right to (i) terminate this Agreement; (ii) suspend all Service(s) being provided to Customer, (iii) terminate the right to use the Software on the web or mobile devices (iv) apply interest to the amount past due, at the rate of one and one-half percent (1½%) (or the maximum legal rate, if less) of the unpaid amount per month; (v) offset any amounts that are owed to Customer by ESO against the past due amount then owed to ESO, and/or (vi) take any action in connection with any other right or remedy ESO may have under this Agreement, at law or in equity. If this Agreement is terminated due to a Customer Default, Customer shall remain liable for all Subscription Fees and other charges due to ESO. In addition, Customer agrees to pay ESO’s reasonable expenses (including attorney and collection agency fees) incurred in enforcing ESO’s rights in the event of a Customer Default.

5. Delivery of Data upon Expiration or Termination of Agreement. Within thirty (30) days after the expiration of this Agreement or the termination of this Agreement pursuant to Section 4a above, ESO will deliver to Customer its data, in machine readable format, on tape or on CD, at Customer’s option. Customer shall reimburse ESO for the cost of the tape(s) on which Customer’s data is delivered to Customer. If Customer wants the data to be delivered in a medium other than tape or CD, ESO shall do its best to accommodate Customer, provided Customer shall provide the medium on which the data is to be provided and shall pay for any additional cost incurred by ESO in accommodating this request.

6. System Maintenance. In the event ESO determines that it is necessary to interrupt the Services or that there is a potential for Services to be interrupted for the performance of system maintenance, ESO will use good-faith efforts to notify Customer prior to the performance of such maintenance and will schedule such maintenance during non-peak hours (midnight to 6 a.m. local time). In no event shall interruption for system maintenance constitute a failure of performance by ESO.

7. Access to Internet. Customer is solely responsible for obtaining and providing for its own broadband connections and/or connections to the Internet, and ESO makes no representations regarding the advisability of any provider or particular network to Customer. Customer’s network and Internet access must meet the minimum requirements set forth in Paragraph 8 below.

8. Mobile Software Use and Support. If Customer elects to use ESO’s proprietary ESO Pro Software (the “Software”) on mobile devices, the provisions of this Section 8 shall apply.

- a. Use of Software. Subject to the terms, conditions and restrictions in this Agreement and in exchange for the per unit Mobile Software Interface Fees, ESO hereby grants to Customer non-exclusive, world-wide, non-transferable rights, for the term of this Agreement, to use and copy (for installation and backup purposes only) the Software to the units for which the Mobile Software Interface has been purchased.
- b. Ownership and Restrictions. This Agreement does not convey any rights of ownership in or title to the Software or any copies thereof. All right, title and interest in the Software and any copies or derivative

works thereof will remain the property of ESO. Customer will not: (a) disassemble, reverse engineer or modify the Software; (b) allow any third party to use the Software; (c) use the Software as a component in any product or service provided by Customer to a third party; (d) transfer, sell, assign, or otherwise convey the Software; (e) remove any proprietary notices placed on or contained within the Software; or (f) copy the Software except for backup purposes. Customer will keep the Software free and clear of all claims, liens, and encumbrances.

- c. Mobile Software Interface Fee. The Mobile Software Interface Fee is non-refundable. The Software shall be considered accepted upon delivery to Customer.
- d. Support and Updates. During the term of this Agreement, ESO shall provide to Customer the support services and will meet the service levels as set forth on Exhibit B attached hereto. ESO will also provide to Customer Updates, in accordance with Exhibit B.
- e. Other Services. Upon request by Customer, ESO may provide services related to the Software other than the standard support described above, at ESO's then-current labor rates. This may include on-site consultation, customization, and initial technical assistance and training for the purpose of installing the Software and training selected personnel on the use and support of the Software. ESO will undertake reasonable efforts to accommodate any written request by Customer for such professional services.
- f. Title. ESO hereby represents and warrants to Customer that ESO is the owner of the Software or otherwise has the right to grant to Customer the rights set forth in this Agreement. In the event any breach or threatened breach of the foregoing representation and warranty, Customer's sole remedy shall be to require ESO to either: i) procure, at ESO's expense, the right to use the Software, ii) replace the Software or any part thereof that is in breach and replace it with Software of comparable functionality that does not cause any breach.
- g. Indemnification by Customer. Customer will defend and indemnify ESO from any and all claims brought against ESO by third parties and will hold ESO harmless from all corresponding losses incurred by ESO arising out of or related to (i) Customer's misuse of the Software, (ii) any services provided by Customer to third parties, or (iii) Customer's negligence or inaction in connection with the services it provides to third parties.

9. **Limitation of Liability.** NOTWITHSTANDING ANY OTHER PROVISION HEREOF, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST REVENUES OR COST OF PURCHASING REPLACEMENT SERVICES) ARISING OUT OF OR RELATING TO THIS AGREEMENT. ADDITIONALLY, ESO SHALL NOT BE LIABLE TO CUSTOMER FOR ANY ACTUAL DAMAGES IN EXCESS OF THE AGGREGATE AMOUNT THAT ESO HAS PRIOR TO SUCH TIME COLLECTED FROM CUSTOMER WITH RESPECT TO SERVICES DELIVERED HEREUNDER. FURTHERMORE, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER, EITHER IN CONTRACT OR IN TORT, FOR PROTECTION FROM UNAUTHORIZED ACCESS OF CUSTOMER DATA OR FROM UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER DATA FILES, PROGRAMS, PROCEDURE OR INFORMATION NOT CONTROLLED BY ESO, THROUGH ACCIDENT OR FRAUDULENT MEANS OR DEVICES.

10. **Acknowledgements and Disclaimer of Warranties.** Customer acknowledges that ESO cannot guarantee that there will never be any outages in ESO's network and that no credits shall be given in the event Customer's access to ESO's network is interrupted. UNLESS OTHERWISE SPECIFIED HEREIN, ESO MAKES NO WARRANTY TO CUSTOMER OR ANY OTHER PERSON OR ENTITY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PURPOSE, OF ANY SERVICE OR SOFTWARE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER (INCLUDING WITHOUT LIMITATION

THAT THERE WILL BE NO IMPAIRMENT OF DATA), ALL OF WHICH WARRANTIES BY ESO ARE HEREBY EXCLUDED AND DISCLAIMED.

11. **Confidential Information.** “Confidential Information” shall mean all information disclosed in writing by one party to the other party that is clearly marked “CONFIDENTIAL” or “PROPRIETARY” by the disclosing party at the time of disclosure. Confidential Information does not include any information that (i) was already known by the receiving party free of any obligation to keep it confidential at the time of its disclosure; (ii) becomes publicly known through no wrongful act of the receiving party; (iii) is rightfully received from a third person without knowledge of any confidential obligation; (iv) is independently acquired or developed without violating any of the obligations under this Agreement; or (v) is approved for release by written authorization of the disclosing party.

A recipient of Confidential Information shall not disclose the information to any person or entity except for the recipients and/or its employees, contractors and consultants who have a need to know such Confidential Information. The recipient may disclose Confidential Information pursuant to a judicial or governmental request, requirement or order; provided that the recipient shall take all reasonable steps to give prior notice to the disclosing party.

Confidential Information shall not be disclosed to any third party without the prior written consent of the owner of the Confidential Information. The recipient shall use Confidential Information only for purposes of this Agreement and shall protect Confidential Information from disclosure using the same degree of care used to protect its own Confidential Information, but in no event less than a reasonable degree of care. Confidential Information shall remain the property of the disclosing party and shall be returned to the disclosing party or destroyed upon request of the disclosing party. Because monetary damages may be insufficient in the event of a breach or threatened breach of the foregoing provisions, the affected party may be entitled to seek an injunction or restraining order in addition to such other rights or remedies as may be available under this Agreement, at law or in equity, including but not limited to monetary damages.

12. Miscellaneous.

- a. Force Majeure. Neither party shall be liable to the other, nor deemed in default under this Agreement if and to the extent that such party’s performance of this Agreement is delayed or prevented by reason of Force Majeure, which is defined for this Agreement to mean an event that is beyond the reasonable control of the party affected and occurs without such party’s fault or negligence.
- b. Entire Agreement and Governing Law. This Agreement and any Business Associate Agreement (as that term is used in the Health Insurance Portability and Accountability Act and related regulations) that is executed by the parties constitute the entire agreement between ESO and Customer pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings in connection herewith. Unless otherwise specified herein, this Agreement may be modified or supplemented only by an instrument in writing executed by each party. This Agreement shall be governed by the laws of the State of North Carolina without regard to its principles of choice of law.
- c. Arbitration. Any controversy or claim arising out of or relating to this Agreement, or a breach of this Agreement, shall be finally settled by arbitration in Yadkinville, North Carolina, and shall be resolved under the laws of the State of North Carolina. The arbitration shall be conducted before a single arbitrator, who may be a private arbitrator, in accordance with the commercial rules and practices of the American Arbitration Association then in effect. Any award, order or judgment pursuant to such arbitration shall be deemed final and binding and may be enforced in any court of competent jurisdiction. The arbitrator may, as part of the arbitration award, permit the substantially prevailing party to recover all or part of its attorney’s fees and other out-of-pocket costs incurred in connection with such arbitration. All arbitration proceedings shall be conducted on a confidential basis.

- d. No Press Releases without Consent. Neither party may use the other party's name or trademarks, or issue any publicity or make any public statements concerning the other party or the existence or content of this Agreement, without the other party's prior written consent. Notwithstanding, Customer agrees that ESO may use Customer's name and logo in ESO sales presentations, without Customer's prior written consent, during the Term of this Agreement, but only for the purposes of identifying the Customer as a customer of ESO. Likewise, Customer may use ESO's name and logo to identify ESO as a vendor or provided for Customer.
- e. Assignment. Customer may only assign this Agreement if it has received the prior written consent to such assignment from ESO, which consent shall not be unreasonably withheld.
- f. Compliance with Laws. Both parties shall comply with and give all notices required by all applicable federal, state and local laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of this Agreement.
- g. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given as of the date of delivery or confirmed facsimile or email transmission. Notices must be delivered or sent to the parties' respective addresses set forth above.
- h. Taxes. Unless otherwise required by law, Customer will be responsible for and will remit (or will reimburse ESO for) all taxes of any kind, including sales, use, duty, customs, withholding, property, value-added, and other similar federal, state or local taxes (other than taxes based on ESO's net income) imposed in connection with the provision of Services or the use of the Software provided to Customer under this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last written below.

ESO SOLUTIONS, INC.

Customer:

By: _____

By: Stan B Kiser

Name: CHRIS DILLIE

Name: Stan B Kiser

Title: PRESIDENT & CEO

Title: County Manager

Date: _____

Date: 8/3/05

Telephone: 866.766.9471 x1022

Telephone:

Email: chris.dillie@esosolutions.com

Email:

EXHIBIT A
SOFTWARE ANNUAL FEE SCHEDULE

Customer hereby selected the following ESO Services, at the fees indicated:

Selected (check all that apply)	ESO Services	Annual Fee Calculation	Total Annual Fees
	ESO Pro™ ePCR Suite	\$1.00/call at 6,000 per year	\$6000

Any one-time fees (mobile software interface fees, other interfaces, training, etc.) are itemized on price quote.

PAYMENT TERMS AND PAYMENT MILESTONES

Client's ePCR subscription year will begin upon execution of the Subscription Agreement or upon the commencement of active work on software implementation, whichever date comes later. Client will be invoiced for full payment of goods and services upon execution of Subscription Agreement.

EXHIBIT B
SUPPORT SERVICES AND SERVICE LEVELS

This Exhibit describes the software support services (“Support Services”) that ESO will provide and the service levels that ESO will meet.

1. Definitions.

Unless defined otherwise herein, capitalized terms used in this Exhibit shall have the same meaning as set forth in the Agreement.

- (a) “Customer Service Representative” shall be the person at ESO designated by ESO to receive notices of Errors encountered by Customer that Customer’s Administrator has been unable to resolve.
- (b) “Error” means any failure of the Software to conform in any material respect with its published specifications.
- (c) “Error Correction” means a bug fix, patch, or other modification or addition that brings the Software into material conformity with its published performance specifications.
- (d) “Priority A Error” means an Error that renders the Software inoperative or causes a complete failure of the Software.
- (e) “Priority B Error” means an Error that substantially degrades the performance of the Software or materially restricts Customer’s use of the Software.
- (f) “Priority C Error” means an Error that causes only a minor impact on Customer’s use of the Software.
- (g) “Update” means any new commercially available or deployable version of the Software, which may include Error Corrections, enhancements or other modifications, issued by ESO from time to time to its Customers.
- (h) “Normal Business Hours” means 8:00 am to 5:00 pm Monday through Friday, Central Time Zone.

2. Customer Obligations.

Customer will provide at least one administrative employee (the “Administrator” or “Administrators”) who will handle all requests for first-level support from Customer’s employees with respect to the Software. Such support is intended to be the “front line” for support and information about the Software to Customer’s employees. ESO will provide training, documentation, and materials to the Administrators to enable the Administrators to provide technical support to Customer’s employees. The Administrators will refer any Errors to ESO’s Customer Service Representative that the Administrators cannot resolve, pursuant to Section 3 below; and the Administrators will assist ESO in gathering information to enable ESO to identify problems with respect to reported Errors.

3. Support Services.

- (a) *Scope.* As further described herein, the Support Services consist of: (i) Error Corrections that the Administrator is unable to resolve, and (ii) periodic delivery of Error Corrections and Updates. The Support Services will be available to Customer during normal business hours, to the extent practicable. Priority A Errors encountered outside normal business hours may be communicated to the Customer Service Representative via telephone or email. Priority B and C Errors encountered outside normal business hours shall be communicated via email.
- (b) *Procedure.*
 - (i) *Report of Error.* In reporting any Error, the Customer’s Administrator will describe to ESO’s Customer Service Representative the Error in reasonable detail and the circumstances under which the Error occurred or is occurring; the Administrator will initially classify the Error as a Priority A, B or C Error. ESO reserves the right to reclassify the Priority of the Error.
 - (ii) *Efforts Required.* ESO shall exercise commercially reasonable efforts to correct any Error reported by the Administrator in accordance with the priority level assigned to such Error by the Administrator. Errors shall be communicated to ESO’s Customer Service Representative after hours as indicated below, depending on the priority level of the Error. In the event of an Error, ESO will within the time periods set forth below, depending upon the priority level of the Error, commence verification of the Error; and, upon verification, will commence Error Correction. ESO will work diligently to verify the Error and, once an Error has been verified, and until an Error Correction has been provided to the Administrator, shall use

commercially reasonable, diligent efforts to provide a workaround for the Error as soon as reasonably practicable. ESO will provide the Administrator with periodic reports on the status of the Error Correction on the frequency as indicated below.

Priority of Error	Communicating Error to ESO outside Normal Business Hours	Time in Which ESO Will Commence Verification	Frequency of Periodic Status Reports
Priority A	Telephone or email	Within 8 hours of notification	Every 4 hours until resolved
Priority B	Email	Within 1 business day of notification	Every 6 hours until resolved
Priority C	Email	Within two calendar weeks of notification	Every week until resolved

4. ESO Server Administration.

(a) ESO is responsible for maintenance of Server hardware. Server administration includes:

- (i) Monitoring and Response
- (ii) Service Availability Monitoring
- (iii) Backups
- (iv) Maintenance
 - A. Microsoft Patch Management
 - B. Security patches to supported applications and related components
 - C. Event Log Monitoring
 - D. Log File Maintenance
 - E. Drive Space Monitoring
- (v) Security
- (vi) Virus Definition & Prevention
- (vii) Firewall

EXHIBIT C
BUSINESS ASSOCIATES AGREEMENT

This Agreement (this "Agreement") is made and entered into as of the contract execution date by and between **ESO Solutions Inc.**, ("Business Associate") a State of Texas corporation, and ("Covered Entity").

WHEREAS, Business Associate acknowledges that Covered Entity has in its possession data that contains individual identifiable health information as defined by Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 ("HIPAA") and the regulations promulgated thereunder; and

WHEREAS, Business Associate and Covered Entity are parties to an agreement (the "Service Agreement"), pursuant to which the fulfillment of the Parties' obligations thereunder necessitates the exchange of, or access to, data including individual identifiable health information,

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

Terms used, but not otherwise defined, in this Agreement shall have the meanings set forth below.

- 1.1 "HHS Transaction Standard Regulation" means the Code of Federal Regulations ("CFR") at Title 45, Sections 160 and 162.
- 1.2 "Individual" means the subject of PHI or, if deceased, his or her personal representative.
- 1.3 "Parties" shall mean the Covered Entity and Business Associate. (Covered Entity and Business Associate, individually, may be referred to as a "Party.")
- 1.4 "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- 1.5 "PHI" shall have the same meaning as the term "protected health information in 45 CFR §160.103, limited to the information created or received by Business Associate from or on behalf of the Covered Entity.
- 1.6 "Required By Law" shall have the same meaning as "required by law" in 45 CFR §164.501.
- 1.7 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

ARTICLE 2 CONFIDENTIALITY

- 2.1 Obligations and Activities of Business Associate. Business Associate agrees as follows:
 - (a) not to use or further disclose PHI other than as permitted or required by this Agreement or as Required By Law;
 - (b) to establish, maintain, and use appropriate safeguards to prevent use or disclosure of the PHI other than as permitted herein;
 - (c) to report to Covered Entity any use, access or disclosure of the PHI not provided for by this Agreement, or any misuse of the PHI, including but not limited to systems compromises of which it becomes aware, and to mitigate, to the extent practicable, any harmful effect that is known to Business Associate as a result thereof;
 - (d) to enforce and maintain appropriate policies, procedures, and access control mechanisms to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. The access and privileges granted to any such agent shall be the minimum necessary to perform the assigned functions;

- (e) to provide access, at the request of Covered Entity, and in the time and manner reasonable designated by Covered Entity, to PHI in a Designated Record Set (as defined in the Privacy Rule), to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524;
- (f) to make any amendment(s) to PHI in a Designated Record Set that the 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 reasonably requested by Covered Entity;
- (g) to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner reasonably requested by Covered Entity or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule;
- (h) to document such disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
- (i) to provide to Covered Entity or an Individual, in a time and manner reasonably requested by Covered Entity, information collected in accordance with Section 2.1(i) above to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
- (j) to promptly notify Covered Entity of all actual or suspected instances of deliberate unauthorized attempts (both successful and unsuccessful) to access PHI;
- (k) to maintain and enforce policies, procedures and processes to protect physical access to hardware, software and/or media containing PHI (e.g., hardcopy, tapes, removable media, etc.) against unauthorized physical access during use, storage, transportation, disposition and /or destruction;
- (l) to ensure that access controls in place to protect PHI and processing resources from unauthorized access are controlled by two-factor identification and authentication: a user ID and a Token, Password or Biometrics.

2.2 Disclosures Required By Law.

In the event that Business Associate is required by law to disclose PHI, Business Associate will immediately provide Covered Entity with written notice and provide Covered Entity an opportunity to oppose any request for such PHI or to take whatever action Covered Entity deems appropriate.

2.3 Specific Use and Disclosure Provisions.

- (a) Except as otherwise limited in this Agreement, Business Associate may use PHI only to carry out the legal responsibilities of the Business Associate under the Service Agreement.
- (b) Except as otherwise limited in this Agreement, Business Associate may only disclose PHI (i) as Required By Law, or (ii) in the fulfillment of its obligations under the Service Agreement and provided that Business Associate has first obtained (A) the consent of Covered Entity for such disclosure, (B) reasonable assurances from the person to whom the information is disclosed that the PHI will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and (C) reasonable assurances from the person to whom the information is disclosed that such person will notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

2.4 Obligations of Covered Entity.

- (a) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosures of PHI.
- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- (d) For any PHI received by Covered Entity from Business Associate on behalf of a third party or another covered entity, Covered Entity agrees to be bound to the obligations and activities of Business Associate enumerated in Section 2.1 as if, and to the same extent, Covered Entity was the named Business Associate hereunder.

2.5 Permissible Requests by Covered Entity.

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity.

2.6 Policy and Procedure Review.

Upon request, Business Associate shall make available to Covered Entity any and all documentation relevant to the safeguarding of PHI including but not limited to current policies and procedures, operational manuals and/or instructions, and/or employment and/or third party agreements.

ARTICLE 3 SECURITY

3.1 Government Healthcare Program Representations.

Business Associate hereby represents and warrants to Covered Entity, its shareholders, members, directors, officers, agents, or employees that Business Associate has not been excluded or has not been served a notice of exclusion or has not been served with a notice of proposed exclusion, or has not committed any acts which are cause for exclusion from participation in, or had any sanctions, or civil or criminal penalties imposed under, any federal or state healthcare program, including, but not limited to, Medicare or Medicaid, and has not been convicted, under federal or state law (including without limitation a plea of nolo contendere or participation in a first offender deterred adjudication or other arrangement whereby a judgment of conviction has been withheld), of a criminal offense related to (a) the neglect or abuse of a patient, (b) the delivery of an item or service, including the performance of management or administrative services related to the delivery of an item or service, under a federal or state healthcare program, (c) fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in any program operated by or financed in whole or in part by any federal, state or local government agency, (d) the unlawful, manufacture, distribution, prescription, or dispensing of a controlled substance, or (e) interference with or obstruction of any investigation into any criminal offense described in (a) through (d) above. Business Associate further agrees to notify Covered Entity immediately after Business Associate becomes aware that the foregoing representation and warranty may be inaccurate or may be incorrect.

3.2 Security Procedures.

Each Party shall employ security procedures that comply with HIPAA and all other applicable state and federal laws and regulations (collectively, the "Law") and that are commercially reasonable, to ensure that

transactions, notices, and other information that are electronically created, communicated, processed, stored, retained or retrieved are authentic, accurate, reliable, complete and confidential. Moreover, each Party shall, and shall require any agent or subcontractor involved in the electronic exchange of data to:

- (a) require its agents and subcontractors to provide security for all data that is electronically exchanged between Covered Entity and Business Associate;
- (b) provide, utilize, and maintain equipment, software, services and testing necessary to assure the secure and reliable transmission and receipt of data containing PHI;
- (c) maintain and enforce security management policies and procedures and utilize mechanisms and processes to prevent, detect, record, analyze, contain and resolve unauthorized access attempts to PHI or processing resources;
- (d) maintain and enforce policies and guidelines for workstation use that delineate appropriate use of workstations to maximize the security of data containing PHI;
- (e) maintain and enforce policies, procedures and a formal program for periodically reviewing its processing infrastructure for potential security vulnerabilities;
- (f) implement and maintain, and require its agents and subcontractors to implement and maintain, appropriate and effective administrative, technical and physical safeguards to protect the security, integrity and confidentiality of data electronically exchanged between Business Associate and Covered Entity, including access to data as provided herein. Each Party and its agents and subcontractors shall keep all security measures current and shall document its security measures implemented in written policies, procedures or guidelines, which it will provide to the other Party upon the other Party's request.

ARTICLE 4 EXCHANGE OF STANDARD TRANSMISSIONS

4.1 Obligations of the Parties. Each of the Parties agrees that for the PHI,

- (a) it will not change any definition, data condition or use of a data element or segment as proscribed in the HHS Transaction Standard Regulation.
- (b) it will not add any data elements or segments to the maximum denied data set as proscribed in the HHS Transaction Standard Regulation.
- (c) it will not use any code or data elements that are either marked "not used" in the HHS Standard's implementation specifications or are not in the HHS Transaction Standard's implementation specifications.
- (d) it will not change the meaning or intent of any of the HHS Transaction Standard's implementation specifications.

4.2 Incorporation of Modifications to HHS Transaction Standards.

Each of the Parties agrees and understands that from time-to-time, HHS may modify and set compliance dates for the HHS Transaction Standards. Each of the Parties agrees to incorporate by reference into this Agreement any such modifications or changes.

4.3 Business Associate Obligations.

- (a) Business Associate shall not submit duplicate transmissions unless so requested by Covered Entity.

- (b) Business Associate shall only perform those transactions that are authorized by Covered Entity. Furthermore, Business Associate assumes all liability for any damage, whether direct or indirect, to the electronic data or to Covered Entity's systems caused by Business Associate's unauthorized use of such transactions.
- (c) Business Associate shall hold Covered Entity harmless from any claim, loss or damage of any kind, whether direct or indirect, whether to person or property, arising out of or related to (1) Business Associate's use or unauthorized disclosure of the electronic data; or (2) Business Associate's submission of data, including but not limited to the submission of incorrect, misleading, incomplete or fraudulent data.
- (d) Business Associate agrees to maintain adequate back-up files to recreate transmissions in the event that such recreations become necessary. Back-up tapes shall be subject to this Agreement to the same extent as original data.
- (e) Business Associate agrees to trace lost or indecipherable transmissions and make reasonable efforts to locate and translate the same. Business Associate shall bear all costs associated with the recreation of incomplete, lost or indecipherable transmissions if such loss is the result of an act or omission of Business Associate.
- (f) Business Associate shall maintain, for seven (7) years, true copies of any source documents from which it produces electronic data.
- (g) Except encounter data furnished by Business Associate to Covered Entity, Business Associate shall not (other than to correct errors) modify any data to which it is granted access under this Agreement or derive new data from such existing data. Any modification of data is to be recorded, and a record of such modification is to be retained by Business Associate for a period of seven (7) years.
- (h) Business Associate shall not disclose security access codes to any third party in any manner without the express written consent of Covered Entity. Business Associate furthermore acknowledges that Covered Entity may change such codes at any time without notice. Business Associate shall assume responsibility for any damages arising from its disclosure of the security access codes or its failure to prevent any third party use of the system without the express written consent of Covered Entity.
- (i) Business Associate shall maintain general liability coverage, including coverage for general commercial liability, for a limit of not less than one million dollars, as well as other coverage as Covered Entity may require, to compensate any parties damaged by Business Associate's negligence. Business Associate shall provide evidence of such coverage in the form of a certificate of insurance and agrees to notify Covered Entity and/or HOI immediately of any reduction or cancellation of such coverage.
- (j) Business Associate agrees to conduct testing with Covered Entity to ensure delivery of files that are HIPAA-AS Compliant and to accommodate Covered Entity's specific business requirements.

4.4 Confidential and Proprietary Information

- (a) Proprietary Information

Business Associate acknowledges that it will have access to certain proprietary information used in Covered Entity's business. Covered Entity's proprietary information derives its commercial value from the fact that it is not available to competitors or any third parties, and the disclosure of this information would or could impair Covered Entity's competitive position or otherwise prejudice its

ongoing business. Business Associate agrees to treat as confidential, and shall not use for its own commercial purpose or any other purpose, Covered Entity's proprietary information. Business Associate shall safeguard Covered Entity's proprietary information against disclosure except as may be expressly permitted herein. Such proprietary information includes, but is not limited to, confidential information concerning the business operations or practices of Covered Entity, including specific technology processes or capabilities.

ARTICLE 5 MISCELLANEOUS

5.1 Indemnification.

Each Party agrees to indemnify the other for any damages, costs, expenses or liabilities, including legal fees and costs, arising from or related to a breach of such Party's obligations hereunder.

5.2 Term and Termination.

(a) **Term.** The Term of this Agreement shall be effective as of the date first written above, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

(b) **Termination for Cause.** Upon a material breach by Business Associate of its obligation hereunder, Covered Entity may (i) terminate this Agreement and the Service Agreement; and (ii) report the violation to the Secretary.

(c) **Effect of Termination.**

(i) Except as provided in paragraph 5.2(c)(ii), upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

(ii) In the event that Business Associate determines that returning the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon Covered Entity's agreement that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

5.3 Disputes.

Any controversy or claim arising out of or relating to the Agreement will be finally settled by compulsory arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), except for injunctive relief as described below.

5.4 Injunctive Relief.

Notwithstanding any rights or remedies provided for in Section 5.3, Covered Entity retains all rights to seek injunctive relief to prevent the unauthorized use of disclosure of PHI by Business Associate or any agent, contractor or third party that received PHI from Business Associate.

5.5 Regulatory References.

A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

5.6 Amendment.

The Parties agree to take such action as is necessary to amend this Agreement from time to time to the extent necessary for Covered Entity to comply with the requirements of HIPAA and its regulations. All amendments to this agreement shall be in writing and signed by both parties.

5.7 Survival.

The respective rights and obligations of Business Associate and Covered Entity under Sections 4.4, 5.1 and 5.2(c) of this Agreement shall survive the termination of this Agreement.

5.8 Limitation of Damages.

Other than liabilities under Section 5.1, neither party shall be liable to the other for any special, incidental, exemplary, punitive or consequential damages arising from or as a result of any delay, omission, or error in the electronic transmission or receipt of any information pursuant to this Agreement, even if the other Party has been advised of the possibility of such damages.

5.9 Interpretation.

Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.