

**NORTH CAROLINA
DURHAM COUNTY**

SERVICE CONTRACT

THIS CONTRACT is made, and entered into this the 26th day of May, 2015, by and between the **COUNTY of DURHAM**, a political subdivision of the State of North Carolina, (hereinafter referred to as "COUNTY"), and **Advanced Data Processing, Inc., a subsidiary of Intermedix Corporation, a Delaware Corporation** a corporation duly authorized to do business in the state of North Carolina, (hereinafter referred to as "CONTRACTOR").

For and in consideration of mutual promises to each as herein after set forth, the parties hereto do mutually agree as follows:

1. **SCOPE OF SERVICES.** CONTRACTOR hereby agrees to provide the services and/or materials under this contract pursuant to the provisions and specifications identified in "Attachment 1" (hereinafter collectively referred to as "Services"). **Attachment I** is hereby incorporated herein and made a part of this contract. Time is of the essence with respect to all provisions of this contract that specify a time for performance.

The COUNTY will perform on-going contract monitoring to ensure that the terms of this contract are complied with. CONTRACTOR agrees to cooperate with the COUNTY in its monitoring process and provide documentation and/or information requested during the term of this Agreement for the purpose of monitoring the services provided by CONTRACTOR.

2. **TERM OF CONTRACT.** The initial term of the contract will be from **Date of Award** through **June 30, 2015** with the option to renew up to four (4) additional terms in one-year increments (July 1st through June 30th), for a total possible life of five terms (5 years) at the sole discretion of the County. The County shall make notice of such intent to renew approximately sixty (60) days prior to the expiration of the current term. Any renewal shall be based on satisfactory performance by the Contractor(s) during the previous years for the services provided. Price increases may be negotiated only at time of renewal.
3. **PAYMENT TO CONTRACTOR.** Intermedix shall submit a consolidated invoice for on-going services provided. The invoice shall contain Intermedix's name and federal tax identification number and shall be signed and dated by an officer of Intermedix. It shall detail all services provided in payment requests. The County will make payments to Intermedix upon receipt of and approval of the invoice by the contracting department, computed as follows:
 - (a) As full compensation for Intermedix Billing and Collection services, the County agrees to pay Intermedix 4.6% of revenues that have been realized, deposited in the County's or EMS Agency's bank account and verified. Payments will be made on a monthly basis in arrears.
 - (b) As full compensation for ESO's Electronic Patient Care Reporting Services, the County agrees to pay Intermedix 1.6% the first year and 0.8% thereafter of revenues that have been realized, deposited in the County's or EMS Agency's bank account and verified. Payments will be made on a monthly basis in arrears.

A Funds Reservation number may be assigned to encumber the funds associated with this contract and must appear on all invoices and correspondence mailed to Purchaser. Payment will be processed promptly upon receipt and approval of the invoice by the County.

4. **RIGHT TO USE SAAS SERVICE AND RESTRICTIONS.**

4.1 Right to Use. Subject to the terms and conditions of this Agreement, during the Term of this Agreement, Intermedix hereby grants to County a limited, non-transferable, non-assignable right to access and use the following, without the right to sublicense: (i) Intermedix's proprietary billing system software (the "SaaS

Service”) as part of the Services provided hereunder, via Internet connection solely in support of the billing and collection with respect to the County’s EMS services; and (ii) any associated end-user documentation provided by Intermedix (the “Documentation”) in support of County’s authorized access and use of the SaaS Service.

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

4.3 Hosting of Application. Intermedix shall establish and maintain a production version of the SaaS Service for County’s use, including any necessary physical links to the Internet via an Internet service provider or through a direct Internet connection. The SaaS Service shall reside on a server or cluster of servers which are physically located at Intermedix’s place of business or at a third-party site. The SaaS Service may reside on a server or cluster of servers used for the applications of other Intermedix.

4.4 Internet Access. County shall be responsible for providing its own Internet access necessary to provide the SaaS Service, and in no event shall County be provided with direct access (by modem or otherwise) to the SaaS 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, Intermedix makes no guarantee that any given user will be able to access the SaaS Services at any given time. There are no assurances that access will be available at all times and uninterrupted, and Intermedix shall not be liable to County for its inability to access the SaaS Service.

4.5 Limitation of Access to SaaS Service. County’s right to access and use the SaaS Service will vary depending upon the scope of the Services being provided by Intermedix. By way of example, if Intermedix is responsible for inputting County’s data, County’s access to the SaaS Service will not include the ability to input, delete, or otherwise change such data. Moreover, access to data shall be limited to the employees, representatives and agents of Intermedix and the authorized Users (as defined below) of County. A complete and signed access form for each of County’s Users authorized to access the SaaS Services must be submitted to and approved by Intermedix. “User” means with respect to the SaaS Service or any other Intermedix product identified in an Exhibit: (i) any employee of County or (ii) any medical professional who is authorized to perform medical services for County within the applicable County territory or jurisdiction as of the Effective Date. County shall not permit the access or use of the SaaS Service by a third party, other than County’s Users who have complied with the terms and conditions of this Agreement, whether to provide services for County or otherwise, without Intermedix’s prior written consent.

4.6 Reporting. Operational and financial data reports for County will be available on the SaaS Services when the SaaS Service is available. The format and content of the data will be established and defined by Intermedix and such reports may be added, modified or deleted with 90 day notice to County. Notwithstanding the foregoing, County may request that specific, custom reports be made available at no additional charge to the County (inclusive of fee for services). Financial reporting required by the County will be finalized upon signing of the contract with no additional cost to the County.

4.7 Acknowledgement with Respect to Reports. With respect to each report generated for County as part of the SaaS 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.

4.8 Third Party Software. The SaaS Service may incorporate software under a license to Intermedix from a third party ("Third Party Software"). If the licensor of any commercial off-the-shelf Third Party Software requires County's agreement to the terms and conditions of such use through an End User License Agreement ("EULA"), Intermedix will provide such EULA to County. In order to use the SaaS Service, County agrees to be bound by all EULA(s) provided during the Term whether by hardcopy or displayed upon installation or use of the SaaS Service. County's use of the SaaS Service subsequent to such notice(s) shall constitute County's acceptance of the EULA(s). County shall not use any Third Party Software embedded in, or provided in connection with the SaaS Service on a stand-alone basis or in any way other than as embedded in, provided in connection with, or for use with the SaaS Service and the applicable EULA.

4.9 Intellectual Property. To the extent permitted by and subject to North Carolina General Statutes section 132-1 et. seq. County agrees that the equipment, computer hardware and software, billing and collection processing, Services, SaaS Service and other related systems and equipment are the property and trade secrets of Intermedix, and that County will not release any information regarding such Confidential Information and/or trade secrets of Intermedix to any third party without the prior written consent of Intermedix. 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 Intermedix's request.

5. CLIET RESPONSIBILITY.

5.1 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 SaaS Service. County will immediately (and in no greater than twenty four (24) hours from County's knowledge of the following) notify Intermedix 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 Intermedix 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 SaaS Service or (iv) any loss or theft of a hardware device on which a User has access to the SaaS 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.

5.2 Rights Following Notification. Upon Intermedix's receipt of notification given by the County of a Security Breach Event, Intermedix, upon 48 hour written notice to the Director of Durham County Emergency Medical Services and to the Administrative Finance Chief, shall have the right to suspend County's access, suspend County's access to the SaaS 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 SaaS Services, (ii)

any other intellectual property rights of Intermedix 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 Intermedix or any of its affiliates unless such a reference is specifically required by HIPAA or other applicable law. Further, if County intends to reference Intermedix in a HIPAA Notification based on its belief that such a reference is required by HIPAA or other applicable law, County shall provide Intermedix 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).

5.3 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 SaaS Services in compliance with the SaaS Security Characteristics. The "SaaS Security Characteristics" means a password to access the SaaS 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. Intermedix shall use commercially reasonable efforts to maintain the security of the SaaS Services, but shall not be responsible for the County's loss or dissemination of passwords or other breaches beyond Intermedix's reasonable control.

- 6. INDEPENDENT CONTRACTOR.** COUNTY and CONTRACTOR agree that CONTRACTOR is an independent contractor and shall not represent itself as an agent or employee of COUNTY for any purpose in the performance of CONTRACTOR's duties under this Contract. Accordingly, CONTRACTOR shall be responsible for payment of all federal, state and local taxes as well as business license fees arising out of CONTRACTOR's activities in accordance with this Contract. For purposes of this contract taxes shall include, but not be limited to, Federal and State Income, Social Security and Unemployment Insurance taxes.

CONTRACTOR, as an independent contractor, shall perform the Services required hereunder in a professional manner and in accordance with the standards of applicable professional organizations and licensing agencies.

- 7. ELECTRONIC PATIENT CARE REPORTING SERVICES.** Intermedix warrants that it has sub-contracted with ESO Solutions, Inc, a Texas corporation with its principal place of business at 3005 South Lamar Blvd., Suite 0 109-372, Austin, Texas 78704 (hereinafter referred to as "ESO") to provide County with electronic patient care reporting services in a Software as a Service (SaaS) Model. Intermedix is the prime contractor in this Agreement and is fully responsible for the performance of ESO. Given the nature of the services to be provided by ESO, the County from time to time will work directly with Intermedix, in combination with Intermedix and ESO, and directly with ESO.

7.1 Subscription Fees.

- a. Subscription Fees.** County has chosen to have **Advanced Data Processing, Inc., a subsidiary of Intermedix Corporation, a Delaware Corporation** with its principal place of business at **6451 N. Federal Highway, Suite 1000 Fort Lauderdale, FL 33308** ("**Billing Agent**") pay all or a portion of the fees for the Services on its behalf. In the event Billing Agent does not pay the Subscription Fees on behalf of County, and County chooses to continue receiving Services, then County shall be responsible for contracting services.

7.2 Other Services. Upon request by County, ESO may provide services related to the Software other than the standard support described. This may include on-site consultation, configuration, 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 shall undertake reasonable efforts to accommodate any written request by County for such professional services.

7.3 Delivery of Data upon Expiration or Termination of Agreement. If County requests its data within thirty (30) days of expiration of this Agreement, or the termination of this Agreement pursuant to Section 13.4 below, ESO shall deliver to County its data. ESO shall make reasonable and good faith efforts to accommodate County's preference for the type of media for delivery.

7.4 Confidential Information. Except as otherwise limited by the North Carolina Public Records Act, GS 132-1 et seq. "Confidential Information" shall mean all information disclosed in writing by Contractor or County to the other 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.

Durham County reserves the rights for its HIPAA protected data and all information associated with patient care, attached EKG files, dispatch data, forms etc. ESO agrees not to grant access or utilize Durham County's information for research, marketing or other purposes without Durham County's prior expressed consent and written permission.

- 8. INSURANCE AND INDEMNITY.** To the fullest extent permitted by laws and regulations, CONTRACTOR shall indemnify and hold harmless the COUNTY and its officials, agents, and employees from and against all claims, damages, losses, and expenses, direct, indirect, or consequential (including but not limited to fees and charges of engineers or architects, attorneys, and other professionals and costs related to court action or mediation) arising out of or resulting from CONTRACTOR's performance of this Contract or the actions of the CONTRACTOR or its officials, employees, or contractors under this Contract or under contracts entered into by the CONTRACTOR in connection with this Contract. This indemnification shall survive the termination of this Contract.

In addition, CONTRACTOR shall comply with the North Carolina Workers' Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. Additionally, CONTRACTOR shall maintain, at its expense, the following minimum insurance coverage:

\$1,000,000 per occurrence /\$2,000,000 aggregate --- Bodily Injury Liability, and
\$ 100,000 --- Property Damage Liability, or

\$1,000,000 per occurrence /\$2,000,000 aggregate---Combined Single Limit Bodily Injury and Property Damage

CONTRACTOR, upon execution of this Contract, shall furnish to the COUNTY a Certificate of Insurance reflecting the minimum limits stated above. The Certificate shall provide for thirty-(30) days advance written notice in the event of a decrease, termination or cancellation of coverage. Providing and maintaining adequate insurance coverage is a material obligation of the CONTRACTOR. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The limits of coverage under each insurance policy maintained by the CONTRACTOR shall not be interpreted as limiting the CONTRACTOR's liability and obligations under the Contract. Notwithstanding the foregoing, nothing contained in this section 5 shall be deemed to constitute a waiver of the sovereign immunity of the County, which immunity is hereby reserved to the County.

9. **FORCE MAJEURE.** No 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.
10. **HEALTH AND SAFETY.** CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs required by OSHA and all other regulatory agencies while providing Services under this Contract.
11. **NON-DISCRIMINATION IN EMPLOYMENT.** CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, national origin, or disability. CONTRACTOR shall take affirmative action to ensure that qualified applicants are employed and that employees are treated fairly and legally during employment with regard to their age, sex, race, creed, national origin, or disability. In the event CONTRACTOR is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Contract may be canceled, terminated or suspended in whole or in part by COUNTY, and CONTRACTOR may be declared ineligible for further COUNTY contracts.
12. **GOVERNING LAW.** This Contract shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this Contract shall be brought in the General Court of Justice in the County of Durham and the State of North Carolina.
13. **TERMINATION.**
 - 13.1 **EVENT OF DEFAULT.** Any one or more of the following acts or omissions of the Contractor shall constitute an Event of Default hereunder:
 - a. Failure to perform the Services satisfactorily or on schedule,
 - b. Failure to submit any report required hereunder; and/or
 - c. Failure to perform any other covenant, term, or condition of this Agreement.

Upon the occurrence of an Event of Default, the County may take one or more or all of the following actions:

1. Give Contractor written Notice of the Event of Default, specifying the Event of Default and requiring it to be remedied within, in the absence of greater or lesser specification of time, seven (7) calendar days from the date of the notice; and if the Event of Default is not timely remedied, terminate the agreement, effective two (2) days after giving the Contractor written Notice of Termination; and/or
2. Deduct any and all expenses incurred by the County for damages caused by the Contractor's Event

- of Default; and/or
3. Treat the agreement as breached and pursue any of its remedies at law or in equity, or both, including damages and specific performance.

13.2 TERMINATION FOR CONVENIENCE. This Contract may be terminated, without cause, by either party upon thirty (30) days written notice to the other party. This termination notice period shall begin upon receipt of the Notice of Termination.

Termination of this Contract, under either section 13.1 or 13.2, shall not form the basis of any claim for loss of anticipated profits by either party.

13.3 COUNTY DATA. If County requests its data within thirty (30) days of expiration of this Agreement, or the termination of this Agreement pursuant to Section 13 above, Intermedix shall deliver to County its data. Intermedix shall make reasonable and good faith efforts to accommodate County's preference for the type of media for delivery.

13.4 TERMINATION 3RD PARTY DATA SOLUTIONS. The County reserves the right, at its sole discretion, to notify Intermedix of County's intent to reject any or all 3rd party data solutions that fail to meet the functional or technical specifications as outlined in the response to proposal (RFP) a copy of which is attached hereto and incorporated herein as **Attachment II**

3rd Party solutions will be reviewed annually no later than the {9th} month of the annual contract period. Intermedix agrees to bring to the County, *for* acceptance and approval, a solution that meets the technical or functional requirements. A good faith effort will be made by Intermedix to bring to the County a solution that is at equal or lesser cost as provided with in the current RFP response. In the event that a solution is not available at equal or lesser cost, Intermedix will provide detailed cost proposals to the County for their approval.

14. **SUCCESSORS AND ASSIGNS.** CONTRACTOR shall not assign its interest in this Contract without the written consent of COUNTY. CONTRACTOR has no authority to enter into contracts on behalf of COUNTY.
15. **COMPLIANCE WITH LAWS.** CONTRACTOR represents that it is in compliance with all Federal, State, and local laws, regulations or orders, as amended or supplemented. The implementation of this Contract shall be carried out in strict compliance with all Federal, State, or local laws.
16. **NOTICES.** All notices which may be required by this contract or any rule of law shall be effective when received by certified mail sent to the following addresses:

COUNTY OF DURHAM

**ATTN: PURCHASING DEPARTMENT
4TH FLOOR, 200 EAST MAIN STREET
DURHAM, NORTH CAROLINA 27701**

CONTRACTOR

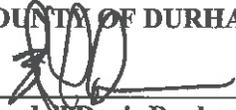
**INTERMEDIX CORPROATION
6451 N. FEDERAL HIGHWAY, SUITE 1000
FORT LAUDERDALE, FL 33308
ATTN: BRAD WILLIAMS, VP & CAO**

17. **AUDIT RIGHTS.** For all Services being provided hereunder, COUNTY shall have the right to inspect, examine, and make copies of any and all books, accounts, invoices, records and other writings relating to the performance of the Services. Audits shall take place at times and locations mutually agreed upon by both parties. Notwithstanding the foregoing, CONTRACTOR must make the materials to be audited available within one (1) week of the request for them. Intermedix will allow an external auditor of the County's choice to perform yearly audits on Durham accounts at the cost of Intermedix.

18. **COUNTY NOT RESPONSIBLE FOR EXPENSES.** COUNTY shall not be liable to CONTRACTOR for any expenses paid or incurred by CONTRACTOR, unless otherwise agreed in writing.
15. **EQUIPMENT.** CONTRACTOR shall supply, at its sole expense, all equipment, tools, materials, and/or supplies required to provide Services hereunder, unless otherwise agreed in writing.
19. **ENTIRE CONTRACT.** This contract, including Attachment 1, shall constitute the entire understanding between COUNTY and CONTRACTOR and shall supersede all prior understandings and agreements relating to the subject matter hereof and may be amended only by written mutual agreement of the parties.
22. **HEADINGS.** The subject headings of the sections are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This contract shall be deemed to have been drafted by both parties and no interpretation shall be made to the contrary.
23. **EXISTENCE.** CONTRACTOR warrants that it is a corporation duly organized, validly existing, and in good standing under the laws of the State of North Carolina and is duly qualified to do business in the State of North Carolina and has full power and authority to enter into and fulfill all the terms and conditions of this contract.
24. **CORPORATE AUTHORITY.** By execution hereof, the person signing for CONTRACTOR below certifies that he/she has read this contract and that he/she is duly authorized to execute this contract on behalf of the CONTRACTOR.
25. **E-VERIFY.** As a condition of payment for services rendered under this agreement, CONTRACTOR shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if CONTRACTOR provides the services to the County utilizing a subcontractor, CONTRACTOR shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes as well. CONTRACTOR shall verify, by affidavit, compliance of the terms of this section upon request by the COUNTY.

IN TESTIMONY WHEREOF, the parties have expressed their agreement to these terms by causing this Service Contract to be executed by their duly authorized office or agent.

COUNTY OF DURHAM



Wendell Davis Durham County Manager

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Budget and Fiscal Control Act



George K. Quick, Durham County Chief Financial Officer

CONTRACTOR


By: _____
Authorized Representative

Print Name: Michael Wallace
Title: CFO

ATTACHMENT I, II, BAA Intermedix, BAA ESO" to follow

ATTACHMENT I

Scope of Services

Intermedix shall provide revenue cycle management services for County as described below. Intermedix shall, during the Term:

- Prepare and submit initial claims and bills for County within no more than three business days of receipt of electronic patient care reports, and prepare and submit secondary claims and bills promptly after identification of the need to submit a secondary claim.
- Assist County in identifying necessary documentation in order to process and bill the accounts.
- Direct payments to a lockbox or bank account designated by County in accordance with North Carolina General Statute 159-32, to which County alone will have signature authority.
- Pursue appeals of denials, partial denials and rejections when deemed appropriate by Intermedix.
- Respond to and follow up with Payors and respond to messages or inquiries from a Payor.
- Provide appropriate storage and data back-up for records pertaining to County's bills and collections hereunder, accessible to County at reasonable times.
- Maintain records of services performed and financial transactions.
- Meet, as needed, with representatives of County to discuss results, problems and recommendations.
- Provide the County with the data necessary for collection services, garnishment, or debt set off to be performed when an account reaches 90 days.
- Intermedix 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.
- 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. The training will included but not limited to live, webcast, and online training.
- Utilize up-to-date knowledge and information with regard to coding requirements and standards, to comply with applicable federal, state and local regulations.
- Provide a designated liaison for County, patient and other Payor concerns.
- Provide a toll free telephone number for patients and other Payors to be answered as designated by County. County service representative at a minimum should be available Monday through Friday, excluding County holidays, from 8 am to 5 pm EST. Provide sufficient staff to support answering calls received with an average caller "hold" time not to exceed 5 minutes. Provide resources to interact with Hispanic population.
- Facilitate proper security of confidential information and proper shredding of disposed materials containing such information.
- Establish arrangements with hospitals to obtain/verify patient insurance and contact information. Hospital systems will include Duke Health System, Veterans Administration, UNC Healthcare, and WakeMed Health and Hospitals. Working status of patients will be confirmed through North Carolina State Department of Labor.
- Respond to any County, Payor or patient inquiry or questions promptly.
- Maintain appropriate accounting procedures for reconciling deposits, receivables, billings, patient accounts, adjustments and refunds.
- Provide reasonable access to County or auditing firm for requested information in order for County to perform appropriate and periodic audits. Reasonable notice will be given to Intermedix for any planned audit and will be conducted during normal business hours of Intermedix.
- Provide timely reports facilitating required aspects of monitoring, evaluating, auditing and managing the Services provided.

- Process refund requests and provide County with documentation substantiating each refund requested. Work with the County's staff to determine reasons for returned checks from insurance companies requesting additional information.
- Assign billing to patient account numbers providing cross-reference to County's assigned transport numbers.
- Maintain responsibility for obtaining missing or incomplete insurance information.
- Provide accurate coding of medical claims based on information provided by County.
- Negotiate and arrange modified payment schedules for individuals unable to pay full amount when billed
- Permit real-time read only electronic look-up access by County to Intermedix's SaaS Service to obtain patient data and billing information.
- 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.
- 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 Services (OIG).

Reporting

Daily Reports:

- Import reports for each days billing
- Billing reports for all claims billed for the previous day
- Deposit report that is balanced to the daily payment posting activity
- Summary report of daily posting activity by category
- Detail by payor report of daily posting activity by patient
- Cash Receipts Report
- Revenue Journal by Date

Month End Reports:

- Account Analysis by Month - Date of Service based
- Account Analysis by Month and Payor Type – Date of Service based
- Accounts Receivable Aging Report by Payor with the following categories: 0- 30; 31-60; 61-90; 91+; and Total
- Cash Collected Report
- Accounts Receivable Overall Summary
- Billing Receivables
- Billing and Receivables Report
- Open Accounts Detail Reports
- Accounts Receivables Reconciliation Report - Accounting Period based
- Account Analysis by Month and Vehicle – Date of Service based
- These reports are to be provided by fiscal year – July 1 to June 30th
- These reports will be provided for each agency
- Distinguish between major insurance carriers on report for billing purposes
- Report monthly, the average paid by the major insurance carriers
- Refund report listing all refunds processed for the months
- Report listing all direct to agency payments for the month
- Cash Receipts Report Category Summary
- Detail Summary by patient
- Reconciliation report reconciling deposits to posting activity for each month
- Reports are due by the 5th day of the following month

Annual Reports:

- Indigence Cost of Care Report for Durham County EMS

- Revenue projection reports for the County system
- Billing Receivables Report

PCI Compliance:

- Intermedix must be and remain PCI compliant for the duration of the contract, including any updated PCI Standards, post contract work
- Intermedix must submit proof of PCI Compliance and comply with the Payment Card Industry (PCI) Data Security Standards (OSS) and remit monthly compliance
- Intermedix shall be responsible for the data storage/management, network communication, virus protection, firewall security and all responsibilities related to PCI compliance certificates validating their compliance. If Intermedix does not comply with these standards, or fails to meet these standards in any way, penalties may be issued up to termination of the contract.
- Intermedix shall be responsible for costs, penalties and fees association with any violation due to PCI non-compliance.

Other

- Provide website access to Durham County to review accounts and obtain reports as detailed above
- Data traffic in transit through a public network (e.g., Internet) to/from Durham County Users (employees, contractors, volunteers, and partners) and Intermedix Billing and Collection Services must utilize one of the following encryption methods.
- SSL {Secure Socket Layer} - with a minimum of 128-bit encryption.
- AES -256 bit encryption.

**Durham County Emergency Medical Services
Business Associate Agreement
Between Durham County Emergency Medical Services and Intermedix Billing**

This Business Associate Agreement (“Agreement”) between Durham County Emergency Medical Services (“Covered Entity”, “Durham County EMS” or Durham Emergency Medical Services”) and **Advanced Data Processing, Inc., a subsidiary of Intermedix Corporation, a Delaware Corporation** (“Business Associate” or “Intermedix Corporation”) is executed to ensure that Intermedix Corporation will appropriately safeguard protected health information (“PHI”) that is created, received, maintained, or transmitted on behalf of Durham County EMS in compliance with the applicable provisions of 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”), and with Public Law 111-5 of February 17, 2009, known as the American Recovery and Reinvestment Act of 2009, Title XII, Subtitle D – Privacy, Sections 13400, *et seq.*, the Health Information Technology and Clinical Health Act, as amended (the “HITECH Act”).

A. General Provisions

1. **Meaning of Terms.** The terms used in this Agreement shall have the same meaning as those terms defined in HIPAA.
2. **Regulatory References.** Any reference in this Agreement to a regulatory section means the section currently in effect or as amended.
3. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with HIPAA.

B. Obligations of Business Associate

Intermedix Corporation agrees that it will:

1. Not use or further disclose PHI other than as permitted or required by this Agreement or as required by law;
2. Use appropriate safeguards and comply, where applicable, with the HIPAA Security Rule with respect to electronic protected health information (“e-PHI”) and implement appropriate physical, technical and administrative safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement;
3. Report to Durham County Emergency Medical Services any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, including any security incident (as defined in the HIPAA Security Rule) and any breaches of unsecured PHI as required by 45 CFR §164.410. Breaches of unsecured PHI shall be reported to

Durham County EMS without unreasonable delay but in no case later than 60 days after discovery of the breach;

4. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Intermedix Corporation agree to the same restrictions, conditions, and requirements that apply to Intermedix Corporation with respect to such information;
5. Make PHI in a designated record set available to Durham County Emergency Medical Services and to an individual who has a right of access in a manner that satisfies Durham County Emergency Medical Service's obligations to provide access to PHI in accordance with 45 CFR §164.524 within 30 days of a request;
6. Make any amendment(s) to PHI in a designated record set as directed by Durham County Emergency Medical Services, or take other measures necessary to satisfy Durham County Emergency Medical Services obligations under 45 CFR §164.526;
7. Maintain and make available information required to provide an accounting of disclosures to Durham County Emergency Medical Services or an individual who has a right to an accounting within 60 days and as necessary to satisfy Durham County Emergency Medical Services obligations under 45 CFR §164.528;
8. To the extent that Intermedix Corporation is to carry out any of Durham County Emergency Medical Services obligations under the HIPAA Privacy Rule, Intermedix Corporation shall comply with the requirements of the Privacy Rule that apply to Durham County EMS when it carries out that obligation;
9. Make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Intermedix Corporation on behalf of Durham County Emergency Medical Services, available to the Secretary of the Department of Health and Human Services for purposes of determining Intermedix Corporation and Durham County Emergency Medical Services compliance with HIPAA and the HITECH Act;
10. Restrict the use or disclosure of PHI if Durham County Emergency Medical Services notifies Intermedix Corporation of any restriction on the use or disclosure of PHI that Durham County Emergency Medical Services has agreed to or is required to abide by under 45 CFR §164.522; and
11. Since Durham County Emergency Medical Services is subject to the Red Flags Rule (found at 16 CFR §681.1 *et seq.*), Intermedix Corporation to assist Durham County Emergency Medical Services in complying with its Red Flags Rule obligations by: (a) implementing policies and procedures to detect relevant Red Flags (as defined under 16 C.F.R. §681.2); (b) taking all steps necessary to comply with the policies and procedures of Durham County Emergency Medical Services Identity Theft Prevention Program; (c) ensuring that any agent or third party who performs services

on its behalf in connection with covered accounts of Durham County Emergency Medical Services agrees to implement reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft; and (d) alerting Durham County Emergency Medical Services of any Red Flag incident (as defined by the Red Flag Rules) of which it becomes aware, the steps it has taken to mitigate any potential harm that may have occurred, and provide a report to Durham County Emergency Medical Services of any threat of identity theft as a result of the incident.

C. Permitted Uses and Disclosures by Business Associate

The specific uses and disclosures of PHI that may be made by Intermedix Corporation on behalf of Durham County Emergency Medical Services include:

1. The preparation of invoices to patients, carriers, insurers and others responsible for payment or reimbursement of the services provided by Durham County Emergency Medical Services to its patients;
2. 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 healthcare services provided by Durham County Emergency Medical Services to its patients or to appeal denials of payment for the same; and
4. Other uses or disclosures of PHI as permitted by HIPAA necessary to perform the services that Intermedix Corporation has been engaged to perform on behalf of Durham County Emergency Medical Services.
5. 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 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 Covered Entity shall comply with the requirements of Section C.6 below. The Parties acknowledge and agree that this Section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents as defined herein. "Unsuccessful Security Incidents" will include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.

6. Breach of Unsecured PHI. The provisions of this Section C.6 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.
7. Creation and Use of De-Identified Data. Business Associate may de-identify any and all PHI, provided that any process or mechanism used to de-identify the data meets the requirements of 45 C.F.R 164.514(a)-(b). Business Associate may use or disclose (and permit others to use or disclose) such de-identified data on a perpetual unrestricted basis, but in no case shall Business Associate attempt to run or develop any keys, codes or algorithms that may be used to re-identify the data.

D. Termination

1. Durham County Emergency Medical Services may terminate this Agreement if Durham County EMS determines that Intermedix Corporation has violated a material term of the Agreement.
2. If either party knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of the other party's obligations under this Agreement, that party shall promptly notify the other party. With respect to such breach or violation, that party shall take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the Agreement if feasible.
3. Upon termination of this Agreement for any reason, Intermedix Corporation shall return to Durham County Emergency Medical Services or destroy all PHI received from Durham County Emergency Medical Services, or created, maintained, or

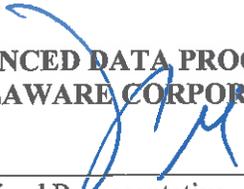
received by Intermedix Corporation on behalf of Durham County Emergency Medical Services that Intermedix Corporation still maintains in any form. Intermedix Corporation shall retain no copies of the PHI. If return or destruction is infeasible, the protections of this Agreement will extend to such PHI.

Agreed to this 26th day of May, 2015.

COUNTY OF DURHAM


Skip Kirkwood Director Durham County
Emergency Medical Services

ADVANCED DATA PROCESSING, INC., A SUBSIDIARY OF INTERMEDIX CORPORATION,
A DELAWARE CORPORATION

By: 
Authorized Representative

Print Name: Michael Wallace

Title: CEO

SUBSCRIPTION AGREEMENT

This Subscription Agreement (the "**Agreement**") is entered into this 26th day of May, 2015 ("**Effective Date**") by and between ESO SOLUTIONS, INC., a Texas corporation with its principal place of business at 9020 N Capital of Texas Highway, Building II-300, Austin, Texas 78759 ("**ESO**"), and Durham County EMS, with its principal place of business at 402 Stadium Drive, North Carolina, 27704 ("**Customer**") (each a "**Party**" and collectively the "**Parties**").

WHEREAS, ESO is in the business of providing software services (the "**Services**") to businesses and municipalities; and

WHEREAS, Customer desires to obtain these Services from ESO, all upon the terms and conditions set forth herein;

NOW, THEREFORE, for and in consideration of the agreement made the Parties mutually agree to the following:

1. **Services.** ESO agrees to provide Customer the Services selected by Customer on Exhibit A attached hereto and incorporated by reference herein. Customer agrees that Services purchased hereunder are neither contingent on the delivery of any future functionality or future features, nor dependent on any oral or written public comments made by ESO regarding future functionality or future features.
2. **Term.** The Term of this Agreement shall commence on the Effective Date and shall terminate one year after the Effective Date ("**Initial Term**"). THE AGREEMENT SHALL AUTOMATICALLY RENEW FOR SUCCESSIVE RENEWAL TERMS OF ONE YEAR, 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 CURRENT TERM.
3. **Subscription Fees.** Customer has chosen to have Advanced Data Processing, Inc., a subsidiary of Intermedix Corporation, a Delaware Corporation with its principal place of business at 6451 N. Federal Hwy, Suite 1002, Ft. Lauderdale, FL 33308 ("**Billing Agent**") pay all of the fees for the Services on its behalf as indicated in Exhibit A (the "**Subscription Fees**").
4. **Termination.**
 - a. **Termination by Customer for ESO Default.** 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 incurring 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 16a, *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 Customer fails to perform any other material obligation under this Agreement and does not remedy such failure within thirty (30) days following written notice from ESO (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 Services being provided to Customer; (iii) terminate the right to use the Software on the web and/or mobile devices; and/or take any action in connection with any other right or remedy ESO may have under this Agreement, at law or in equity.
5. **Delivery of Data upon Expiration or Termination of Agreement.** If Customer requests its data within thirty (30) days of expiration of this Agreement, or the termination of this Agreement pursuant to Section 4 above, ESO shall deliver to Customer its data. ESO shall make reasonable and good faith efforts to accommodate Customer's preference for the type of media for delivery.
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. Central Standard Time). In no event shall interruption of Services for system maintenance constitute a failure of performance by ESO.
7. **Access to Internet.** Customer has sole responsibility for obtaining, maintaining, and securing its connections to the Internet, and ESO makes no representations to Customer regarding the reliability, performance or security of any particular network or provider.
8. **Mobile Software.** If Customer elects to use ESO's Mobile Software (the "**Software**"), the provisions of this Section shall apply.
 - a. **Use of Software.** Subject to the terms, conditions and restrictions in this Agreement and in exchange for the Mobile Software Interface Fees and/or Subscription Fees, ESO hereby grants to Customer a 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 shall remain the property of ESO. Customer will not: (i) disassemble, reverse engineer or modify the Software; (ii) allow any third party to use the Software; (iii) use the Software as a component in any product or service provided by Customer to a third party; (iv) transfer, sell, assign, or otherwise convey the Software; (v) remove any proprietary notices placed on or contained within the Software; or (vi) copy the Software except for backup purposes. Customer agrees to keep the Software free and clear of all claims, liens, and encumbrances.
 - c. **Mobile Software Interface.** The Software shall be deemed accepted upon delivery to Customer.

- c. **Mobile Software Interface.** The Software shall be deemed accepted upon delivery to Customer.
- d. **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 of a 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, or (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.
9. **Support and Updates.** During the Term of this Agreement, ESO shall provide Customer the support services and will meet the service levels as set forth in Exhibit B attached hereto and incorporated herein. ESO will also provide Updates to Customer, in accordance with Exhibit B.
10. **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, configuration, 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 shall undertake reasonable efforts to accommodate any written request by Customer for such professional services.
11. **Intentionally Omitted.**
12. **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, PROCEDURES OR INFORMATION, NOT CONTROLLED BY ESO, THROUGH ACCIDENT OR FRAUDULENT MEANS OR DEVICES. THIS SECTION SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT. EACH PARTY ACKNOWLEDGES THAT THIS LIMITATION OF LIABILITY WAS SPECIFICALLY BARGAINED FOR AND IS ACCEPTABLE TO CUSTOMER. FURTHER, EACH PARTY'S WILLINGNESS TO AGREE TO THE LIMITATIONS CONTAINED IN THIS SECTION WAS MATERIAL TO ENTERING INTO THIS AGREEMENT.
13. **Acknowledgements and Disclaimer of Warranties.** Customer acknowledges that ESO cannot guarantee that there will never be any outages in ESO network and that no credits shall be given in the event Customer's access to ESO's network is interrupted. THE SERVICES ARE PROVIDED "AS IS." UNLESS OTHERWISE SPECIFIED HEREIN, ESO MAKES NO REPRESENTATION OR WARRANTY TO CUSTOMER OR ANY OTHER PERSON OR ENTITY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR A PARTICULAR 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 OR THAT SERVICES WILL BE UNINTERRUPTED OR ERROR FREE), ALL OF WHICH WARRANTIES BY ESO ARE HEREBY EXCLUDED AND DISCLAIMED, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.
14. **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 or which reasonably should be understood to be confidential given the nature of the information and the circumstances 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 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.

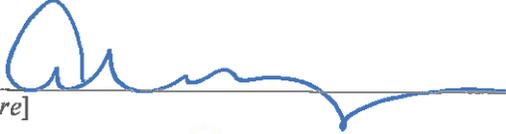
15. General Provisions.

- 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 to mean an event that is beyond the reasonable control of the affected Party and occurs without such Party's fault or negligence.
- b. Entire Agreement. This Agreement, including all schedules, exhibits, addenda and any Business Associate Agreement (as that term is used in the Health Insurance Portability and Accountability Act and related regulations) (*see Exhibit C*) are incorporated herein by reference, constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this agreement shall be effective unless in writing and signed by the Party against whom the modification, amendment or waiver is asserted.
- c. Governing Law. This Agreement shall be governed by the laws of the State of North Carolina without regard to choice or conflict of law rules.
- d. Intentionally Omitted.
- e. No Press Releases without Consent. Neither Party may use the other Party's name or trademarks, nor issue any publicity or 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 of Customer.
- f. Aggregate Data Reporting. Customer hereby grants ESO the right to collect and store its data for aggregate reporting purposes, but in no event shall ESO disclose Protected Health Information ("**PHI**") unless permitted by law. Moreover, ESO will not identify Customer without Customer's consent.
- g. 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.
- h. Waiver. No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. If Customer has made any change to the Agreement that Customer did not bring to ESO's attention in a way that is reasonably calculated to put ESO on notice of the change, the change shall not become part of the Agreement.
- i. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- j. Intentionally Omitted.
- k. Independent Contractor. Nothing in this Agreement shall be construed to create: (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates; or (ii) a relationship of employer and employee between the Parties. ESO is an independent contractor and not an agent of Customer.
- l. Counterparts; Execution. This Agreement and any amendments hereto may be executed by the Parties individually or in any combination, in one or more counterparts, each of which shall be an original and all of which shall together constitute one and the same agreement. Execution and delivery of this Agreement and any amendments by the Parties shall be legally valid and effective through: (i) executing and delivering the paper copy of the document, (ii) transmitting the executed paper copy of the documents by facsimile transmission or electronic mail in "portable document format" ("**.pdf**") or other electronically scanned format, or (iii) creating, generating, sending, receiving or storing by electronic means this Agreement and any amendments, the execution of which is accomplished through use of an electronic process and executed or adopted by a Party with the intent to execute this Agreement (i.e. "**electronic signature**" through a process such as DocuSign®). In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the Party against whom enforcement of this Agreement is sought.
- m. Notice. All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; (iii) overnight delivery service with proof of delivery, or (iv) fax. Notices shall be sent to the addresses above. No Party to this Agreement shall refuse delivery of any notice hereunder.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned expressly agree and warrant that they are authorized to sign and enter into this Agreement on behalf of the Party for which they sign and have executed this Agreement on the Effective Date first written above.

ESO:



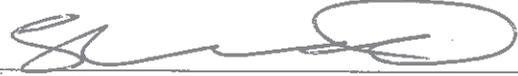
[Signature]

~~Chris Dillie~~ Elaine Gordon
[Printed Name]

~~President and CEO~~ CFO
[Title]

5/26/15
[Date]

CUSTOMER:



[Signature]

Skip Kudrow
[Printed Name]

Director EMS
[Title]

5/28/15
[Date]

EXHIBIT A
SCHEDULE OF SUBSCRIPTION FEES

Customer has selected and Billing Agent has agreed to pay all Subscription Fees for the following Services. In the event Billing Agent does not pay for the Services and/or the Service Contract between Customer and Billing Agent is terminated, expires, or is not renewed, then Customer and ESO agree that a new agreement is required between the parties in order for Customer to continue receiving these Services. Customer shall have no financial obligation to ESO for the Subscription Fees for Services unless the parties enter into a separate agreement for Services with agreed upon pricing.

Product
ePCR Suite w/Quality Management 30,000 - 45,000 Incidents
Fax 30,000 - 45,000 Incidents
ePCR Mobile
Interface - Monitor
Interface - CAD (Meets ESO API)
Interface - Billing (Zoll or TriTech)
HDE - ESO ePCR Connection
Services - Training
Services - Training Travel Costs

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 inoperable 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 7:00 am to 7:00 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.

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

- (a) Monitoring and Response
- (b) Service Availability Monitoring
- (c) Backups
- (d) Maintenance
 - (i) Microsoft Patch Management
 - (ii) Security patches to supported applications and related components
 - (iii) Event Log Monitoring
 - (iv) Log File Maintenance
 - (v) Drive Space Monitoring
- (e) Security
- (f) Virus Definition & Prevention
- (g) Firewall

EXHIBIT C

Durham County Emergency Medical Services Business Associate Agreement Between Durham County Emergency Medical Services and ESO Solutions Inc

This Business Associate Agreement (“Agreement”) between Durham County Emergency Medical Services (“Covered Entity”, “Durham County EMS” or Durham Emergency Medical Services”) and **ESO SOLUTIONS INC.** (“Business Associate” or “ESO Solutions”) is executed to ensure that ESO Solutions will appropriately safeguard protected health information (“PHI”) that is created, received, maintained, or transmitted on behalf of Durham County EMS in compliance with the applicable provisions of 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”), and with Public Law 111-5 of February 17, 2009, known as the American Recovery and Reinvestment Act of 2009, Title XII, Subtitle D – Privacy, Sections 13400, *et seq.*, the Health Information Technology and Clinical Health Act, as amended (the “HITECH Act”).

A. General Provisions

1. **Meaning of Terms.** The terms used in this Agreement shall have the same meaning as those terms defined in HIPAA.
2. **Regulatory References.** Any reference in this Agreement to a regulatory section means the section currently in effect or as amended.
3. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with HIPAA.

B. Obligations of Business Associate

ESO Solutions agrees that it will:

1. Not use or further disclose PHI other than as permitted or required by this Agreement or as required by law;
2. Use appropriate safeguards and comply, where applicable, with the HIPAA Security Rule with respect to electronic protected health information (“e-PHI”) and implement appropriate physical, technical and administrative safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement;
3. Report to Durham County Emergency Medical Services any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, including any security incident (as defined in the HIPAA Security Rule) and any breaches of unsecured PHI as required by 45 CFR §164.410. Breaches of unsecured PHI shall be reported to Durham County EMS without unreasonable delay but in no case later than 60 days after discovery of the breach;
4. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of ESO Solutions agree to the same restrictions, conditions, and requirements that apply to ESO Solutions with respect to such information;
5. Make PHI in a designated record set available to Durham County Emergency Medical Services and to an individual who has a right of access in a manner that satisfies Durham County Emergency Medical Service’s obligations to provide access to PHI in accordance with 45 CFR §164.524 within 30 days of a request;

6. Make any amendment(s) to PHI in a designated record set as directed by Durham County Emergency Medical Services, or take other measures necessary to satisfy Durham County Emergency Medical Services obligations under 45 CFR §164.526;
7. Maintain and make available information required to provide an accounting of disclosures to Durham County Emergency Medical Services or an individual who has a right to an accounting within 60 days and as necessary to satisfy Durham County Emergency Medical Services obligations under 45 CFR §164.528;
8. To the extent that ESO Solutions is to carry out any of Durham County Emergency Medical Services obligations under the HIPAA Privacy Rule, ESO Solutions shall comply with the requirements of the Privacy Rule that apply to Durham County EMS when it carries out that obligation;
9. Make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by ESO Solutions on behalf of Durham County Emergency Medical Services, available to the Secretary of the Department of Health and Human Services for purposes of determining ESO Solutions and Durham County Emergency Medical Services compliance with HIPAA and the HITECH Act;
10. Restrict the use or disclosure of PHI if Durham County Emergency Medical Services notifies ESO Solutions of any restriction on the use or disclosure of PHI that Durham County Emergency Medical Services has agreed to or is required to abide by under 45 CFR §164.522; and
11. Since Durham County Emergency Medical Services is subject to the Red Flags Rule (found at 16 CFR §681.1 *et seq.*), ESO Solutions to assist Durham County Emergency Medical Services in complying with its Red Flags Rule obligations by: (a) implementing policies and procedures to detect relevant Red Flags (as defined under 16 C.F.R. §681.2); (b) taking all steps necessary to comply with the policies and procedures of Durham County Emergency Medical Services Identity Theft Prevention Program; (c) ensuring that any agent or third party who performs services on its behalf in connection with covered accounts of Durham County Emergency Medical Services agrees to implement reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft; and (d) alerting Durham County Emergency Medical Services of any Red Flag incident (as defined by the Red Flag Rules) of which it becomes aware, the steps it has taken to mitigate any potential harm that may have occurred, and provide a report to Durham County Emergency Medical Services of any threat of identity theft as a result of the incident.

C. Permitted Uses and Disclosures by Business Associate

The specific uses and disclosures of PHI that may be made by ESO Solutions on behalf of Durham County Emergency Medical Services include:

1. Uses or disclosures of PHI as permitted by HIPAA necessary to perform the services that ESO Solutions has been engaged to perform on behalf of Durham County Emergency Medical Services.
2. 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 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 Covered Entity shall comply with the requirements of Section C.6 below. The Parties acknowledge and agree that this Section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents as defined herein. "Unsuccessful Security Incidents" will include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.

3. Breach of Unsecured PHI. The provisions of this Section C.6 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. Creation and Use of De-Identified Data. Business Associate may de-identify any and all PHI, provided that any process or mechanism used to de-identify the data meets the requirements of 45 C.F.R. 164.514(a)-(b). Business Associate may use or disclose (and permit others to use or disclose) such de-identified data on a perpetual unrestricted basis, but in no case shall Business Associate attempt to run or develop any keys, codes or algorithms that may be used to re-identify the data.
5. Proper Management and Administration. Business Associate may use PHI (i) as necessary for the proper management and administration of Business Associate or to carry out its legal responsibilities; provided that such uses are permitted under federal and applicable state law, and (ii) to provide data aggregation services relating to the health care operations of the Covered Entity as defined by 45 C.F.R. § 164.501. Covered Entity also authorizes Business Associate to collect and store its data for aggregate reporting, but in no event shall Business Associate disclose PHI unless permitted by law. Moreover, Business Associate will not identify Covered Entity without consent.

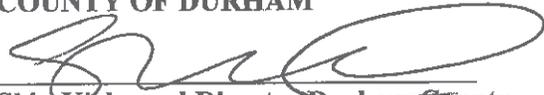
D. Termination

1. Durham County Emergency Medical Services may terminate this Agreement if Durham County EMS determines that ESO Solutions has violated a material term of the Agreement.
2. If either party knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of the other party's obligations under this Agreement, that party shall promptly notify the other party. With respect to such breach or violation, that party shall take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the Agreement if feasible.

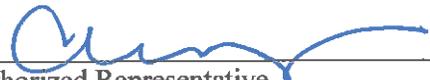
3. Upon termination of this Agreement for any reason, ESO Solutions shall return to Durham County Emergency Medical Services or destroy all PHI received from Durham County Emergency Medical Services, or created, maintained, or received by ESO Solutions on behalf of Durham County Emergency Medical Services that ESO Solutions still maintains in any form. ESO Solutions shall retain no copies of the PHI. If return or destruction is infeasible, the protections of this Agreement will extend to such PHI.

Agreed to this 26th day of May, 2015.

COUNTY OF DURHAM


Skip Kirkwood Director Durham County
Emergency Medical Services

ESO Solutions, Inc.

By: 
Authorized Representative

Print Name: Elaine Gordon

Title: CFO