

BILLING SERVICES AGREEMENT

THIS BILLING SERVICES AGREEMENT (hereinafter "Agreement"), is entered into this day of , 2017 between EMS MANAGEMENT & CONSULTANTS, INC. (hereinafter "EMS|MC") and SPOTSYLVANIA COUNTY (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, and billable medical transportation services; and

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

WHEREAS, Client has identified County of Rockingham, Request for Proposal, RFP #16-09071601, Revenue Recovery, which allows other bodies to utilize the RFP and any resulting Agreement on a Cooperative Procurement basis. EMS|MC responded with a Proposal for EMS Billing Services for County of Rockingham, RFP #16-90716-01, dated September 26, 2016, and the parties entered into the Billing Services Agreement between EMS|MC and Rockingham County dated February 9, 2017.

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 (the "Services"). The 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 payers and patients or other entities, (as EMS|MC, in its sole discretion 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 payer 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 payer 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 Client within ten (10) business days of the last business day of the month. The month end report shall include an account analysis report, aging report and accounts receivables reconciliation report. Deposit reports will be provided daily.

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 EMS|MC in the provision of the Services hereunder. This undertaking will expressly survive the termination of this Agreement.

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.

Client shall promptly advise EMS|MC of notices of audit received by Client. 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 payers, with which Client contracts ("Payer Inquiries"),. Client will be notified of Payer 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 Client to receive such payments and as to such account only Client, through its officers and directors, shall have access.

The Services provided by EMS|MC to Client under this Agreement are conditioned on Client's fulfillment of the responsibilities set forth in Sections 2 and 3 of this Agreement.

EMS|MC shall have no responsibility to provide any of the following services:

- (a) Determining the accuracy or truthfulness of documentation and information provided by Client;
- (b) Providing services outside the EMS|MC billing system;
- (c) Submitting any claim that EMS|MC believes to be inaccurate or fraudulent;

- (d) Providing any service not expressly required of EMS|MC by this Agreement.

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 5.25% percent 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, debt set-off programs, 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 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. The parties agree that a review of the "Net Collections" data for each twelve (12) month period of the Agreement term will be performed by the parties within thirty (30) days of the end of each twelve (12) month period of the Agreement term to determine the average revenue collected per transport so that the parties can discuss possible amendments to the Contractor's fee, if any. The following fee schedule shall be utilized in determining the percentage of "Net Collections" based on annual average revenue collected per transport.

County of Rockingham Cooperative Procurement Fee Schedule

Net Collections Fee Schedule		Management Fee %
	<= 224.99	7.00%
225.00	239.99	6.60%
240.00	254.99	6.20%
255.00	269.99	5.85%
270.00	284.99	5.55%
285.00	299.99	5.25%
300.00	314.99	5.00%
315.00	329.99	4.75%
	>=330.00	4.50%

EMS|MC shall submit an invoice to Client by the tenth (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. Such amount shall be paid without offset unless the calculation of the amount is disputed in good faith, in which case Client shall pay the undisputed amount and shall provide EMS|MC with detailed written notice of the basis for the disputed portion no later than the time payment is normally due. All invoices are to be paid directly from Client's banking institution to EMS|MC via paper check, direct deposit or ACH draft initiated by EMSMC into EMS|MC's bank account.

In the event of a material change to the billing process and/or scope of Services provided in this Agreement or a significant difference in the original patient demographics provided by Client, EMS|MC reserves the right to, in good faith, negotiate a fee change with Client and amend this Agreement.

EMS|MC may, in its sole discretion, immediately cease to provide Services for Client should the outstanding balance owed to EMS|MC become in arrears. Claims processing will not resume until all outstanding balances are paid in full or arrangements approved by EMS|MC have been made to wholly resolve any outstanding balances.

FEES and CHARGES - A one-time late fee of 5% shall be added to any invoices that remain unpaid by the 5th day of the following 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 the presentment of said invoice for any unpaid balances at the rate of 1½% per month or the highest rate allowed under applicable law, whichever is lower.

3. RESPONSIBILITIES OF CLIENT.

The following responsibilities of Client are a condition of EMS|MC's services under this Agreement, and EMS|MC shall have no obligation to provide the Services to the extent that Client has not fulfilled these responsibilities:

- (a) Client will pay all amounts owed to EMS|MC under this Agreement.
- (b) Client agrees to provide EMS|MC with administrative access to the ePCR system or similar access in order to run reports and review documents and attachments to better service Client's account.
- (c) Client will provide EMS|MC with complete and accurate 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.
- (d) In addition, Client shall provide complete and accurate medical record documentation necessary to ensure 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. Client will report to EMS|MC within ten (10) business days of payments received directly by Client, and promptly notify EMS|MC of any cases requiring special handling or billing. Client must provide Patient Care Reports (PCR's) in a timely manner in order to achieve higher performance. Further, 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 payer or insurance carrier to allow EMS|MC to carry out its billing and other duties under this Agreement; implement reasonable and customary charges for

complete, compliant billing as may be identified and recommended by EMS|MC; 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's accounts.

- (e) In addition, Client is to provide EMS|MC with complete and 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. Client represents and warrants 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.
- (f) 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.
- (g) Client shall ensure that any refunds posted by EMS|MC are actually issued and paid to the patient, insurer, or other payer as appropriate.
- (h) Client shall allow EMS|MC to audit Client's records and processes at least annually, and on a more frequent basis if reasonably necessary, upon ten (10) days advance notice to Client, during regular business hours, to attempt to ensure that Client is in compliance with this Agreement and that all fees due to EMS|MC have been paid.

- (i) Client shall provide EMS|MC with access to its facilities and personnel for the purpose of providing on-site and/or online training to such personnel. Client shall cooperate with EMS|MC and facilitate any training that EMS|MC wishes to provide.
- (j) Client shall complete EMS|MC's online training course within 90 days of the contract start date and all new hires will complete EMS|MC's online documentation training within 90 days of hire date. Newly developed training materials by EMS|MC should be mutually agreed upon by the parties to be required training.
- (k) Client shall comply with all applicable federal, state, and local laws, rules, regulations, and other legal requirements that in any way affect this Agreement or the duties and responsibilities of the parties hereunder.

4. **TERM OF AGREEMENT.**

- (a) This Agreement shall be effective commencing on July 1, 2017 and shall thereafter continue through December 31, 2018. This Agreement shall be binding upon the parties hereto and their respective successors, assigns, and transferees. The Agreement shall automatically renew on the same terms and conditions as stated herein, for three (3) 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.
- (i) **Termination for Cause.** Notwithstanding Section 4(a), this Agreement may be terminated by either party at any time for Cause, as defined below, based on a material breach of a term or condition hereof by the other party which is not remedied by the other party within ten (10) 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 damage to property, business, reputation, or good will of the other party hereto arising from the gross negligence or willful misconduct of a party;
- (3) Injury to any customer, independent contractor, employee or agent of the other party hereto arising from the gross negligence or willful misconduct of a party;
- (4) Client's engagement of another billing services provider to provide services during the term of this Agreement;
- (5) Harassment of any employee or contractor of a party or commitment of any act by a party which creates an offensive work environment;
- (6) Failure to practice in accordance with the appropriate policies, standards and procedures established by the respective parties;
- (7) Commitment of any unethical or immoral act which harms the other party or could have the effect of harming the other party; or
- (8) Any breach of any material provision of this Agreement.

5. RESPONSIBILITIES UPON TERMINATION.

- (a) Subject to Client's payment of 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 data from the billing system regarding open accounts in an electronic format, and will otherwise

reasonably cooperate and assist in any transition of the Services 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 Section 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 Section 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, or in the event that EMS|MC believes that Client has provided false or fraudulent claim information, EMS|MC shall have no obligation to provide any Services after the date of termination.

6. EXCLUSIVITY AND MISCELLANEOUS BILLING POLICIES.

- (a) During the term of this Agreement, EMS|MC shall be Client's exclusive provider of the Services. Client may not directly file, submit or invoice for any medical or medical transportation 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 Section 3(b) hereof and shall be treated as Net Collections for purposes of Section 2(a) hereof.
- (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) 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 be 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 EMS|MC discovers credible evidence of Client's continued misconduct or flagrant, fraudulent or abusive conduct. In the event of such evidence, EMS|MC has the right to (a) refrain from submitting any false or inappropriate claims, (b) terminate this Agreement and/or (c) report the misconduct to the appropriate authorities.

7. NON-INTERFERENCE/NON-SOLICITATION OF EMS|MC EMPLOYEES.

Client understands and agrees that the relationship between EMS|MC and each of its employees constitutes a valuable asset of EMS|MC.

Accordingly, Client agrees that both during the term of this Agreement and for a period beginning on the date of termination of this Agreement, whatever the reason, and ending three (3) years after the date of

termination of this Agreement (the "Restricted Period"), Client shall not, without EMS|MC's prior written consent, directly or indirectly, solicit or recruit for employment; attempt to solicit or recruit for employment; or attempt to hire or accept as an employee, consultant, contractor, or otherwise, or accept any work from EMS|MC's employees with whom Client had material contact during the term of this Agreement, in any position where Client would receive from such employees the same or similar services that EMS|MC performed for Client during the term of this Agreement. Client also agrees during the Restricted Period not to unlawfully urge, encourage, induce, or attempt to urge, encourage, or induce any employee of EMS|MC to terminate his or her employment with EMS|MC. Client has carefully read and considered the provisions of Section 7 hereof, and having done so, agrees that the restrictions set forth in such section (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 ("Confidential Information"), shall remain the sole property of Client and shall be held in confidence and safekeeping by 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 EMS|MC's 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 and to the extent required to do so by applicable law, including, without limitation, federal, state or local law enforcement authorities acting within their jurisdiction and/or acting under the law and/or under court orders. EMS|MC's obligations of confidentiality under this Section 8 shall not extend to: (1) information which is already in the possession of EMS|MC and not under a duty of non-disclosure; (2) information which is generally known or revealed to the public through no fault of EMS|MC; (3) information which is revealed to EMS|MC by a third party, unless such party is under a duty of non-disclosure of which EMS|MC is aware; or (4) information that was or is independently developed by EMS|MC without reference to or use of any of

the Confidential Information. In addition to the foregoing, EMS|MC and Client shall comply with the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), and with the regulations promulgated thereunder, including, without limitation, the Privacy Rule, the Security Rule, and the amendments enacted in the Health Information Technology for Economic and Clinical Health ("HITECH") Act. EMS|MC and Client shall execute a separate Business Associate Agreement under HIPAA.

9. LIMITATIONS OF LIABILITY AND DISPUTE RESOLUTION

- (a) EMS|MC and Client acknowledge and agree that despite their best efforts, billing errors may occur from time to time. Each party will promptly notify the other party of the discovery of a billing error. EMS|MC's sole obligation in the event of a billing error will be to correct the error by making appropriate changes to the information in its system, posting a refund if appropriate, and re-billing the underlying claim if permissible.
- (b) A "Claim" is defined as any claim or other matter in dispute between EMS|MC and Client that arises from or relates in any way to this Agreement or to the Services, hardware, software, or data provided by EMS|MC hereunder, regardless of whether such claim or matter is denominated as a contract claim, tort claim, warranty claim, indemnity claim, statutory claim, arbitration demand, or otherwise.
- (c) To the fullest extent allowed by law, the total liability of EMS|MC to Client regarding any and all Claims shall be capped at, and shall in no event exceed, the total fees paid by Client to EMS|MC under this Agreement (the "Liability Cap"). All amounts that may be potentially awarded against EMS|MC in connection with a Claim are included in and subject to the Liability Cap, and shall not cause the Liability Cap to be exceeded, including, without limitation, all compensatory damages, other damages, interest, costs, expenses, and attorneys' fees. Provided, however, that nothing in the foregoing shall be construed as an admission of liability by EMS|MC in any amount or

as a waiver or compromise of any other defense that may be available to EMS|MC regarding any Claim.

- (d) To the fullest extent allowed by law, EMS|MC and Client waive Claims against each other for consequential, indirect, special, punitive, exemplary, and treble damages, and for any other damages in excess of direct, compensatory damages (the "Non-Direct Damages Waiver").
- (e) Subject to the Liability Cap and the Claim Time Limit, but notwithstanding the Non-Direct Damages Waiver, EMS|MC agrees to indemnify, hold harmless, and defend Client with reasonably acceptable counsel from and against any fines, penalties, damages, and judgments that Client becomes legally obligated to pay to a third party proximately caused by EMS|MC's gross negligence or willful misconduct. Provided, however, that this indemnity is subject to the following further conditions and limitations: (i) Client must provide prompt written notice to EMS|MC of the matter for which indemnity is or may be sought, within such time that no right of EMS|MC is prejudiced, and in no event no later than thirty (30) days after Client first becomes aware of the facts that give rise or may give rise to a right of indemnity; (ii) Client must allow EMS|MC the opportunity to direct and control the defense and handling of the matter for which indemnity is or may be sought; (iii) Client must not agree to any settlement or other voluntary resolution of a matter for which indemnity is or may be sought without EMS|MC's express consent; and (iv) Client shall not seek or be entitled to indemnify for amounts that Client reimburses or refunds to Medicaid, Medicare, any governmental entity, any insurer, or any other payer as a result of medical services or medical transportation services for which Client should not have received payment in the first place under applicable rules, regulations, standards and policies. Client waives all rights of indemnity against EMS|MC not in accordance with this subsection.

10. 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, or as establishing an agency relationship beyond EMS|MC's service as a billing and collection agent of Client under the express terms of this Agreement. EMS|MC and its employees and representatives 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 successors, assigns (where permitted), and transferees.

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:
Spotsylvania County

9119 Dean Ridings Lane, Room 2270
Spotsylvania, Virginia 22553

EMS|MC:
EMS Management & Consultants, Inc.
Laurie O'Quinn
2540 Empire Drive
Suite 100
Winston-Salem, NC 27103

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 section.

Governing Law. This Agreement and the rights and obligations to the parties hereunder shall be construed in accordance with and governed by the laws of the State of Virginia, notwithstanding any conflicts of law rules to the contrary. Venue for any dispute taken to court shall be in the Virginia State Courts of Spotsylvania County, Virginia.

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. Without limiting the foregoing, this Agreement supersedes and takes precedence over any inconsistent terms contained in any Request for Proposal ("RFP") from Client and any response to that RFP from EMS|MC.

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.

Severability. If any provision of this Agreement shall not be valid for any reason, such provision shall be entirely severable from, and shall have no effect upon, the remainder of this Agreement. Any such invalid provision shall be subject to partial enforcement to the extent necessary to protect the interest of the parties hereto.

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.

Spotsylvania County

By: Allan Logie

By: _____

Print Name: Allan Logie

Print Name: _____

Title: Chief Performance Officer

Title: _____

Date: 4/13/2017

Date: _____

APPROVED AS TO FORM:

Lin D. Pham
Asst COUNTY ATTORNEY