

**BILLING SERVICES AGREEMENT**

THIS BILLING SERVICES AGREEMENT (hereinafter "Agreement"), is entered into this 1<sup>st</sup> day of July, 2013 between EMS MANAGEMENT & CONSULTANTS, INC. (hereinafter "EMS|MC") and Rowan 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 (hereinafter "Services"), and billable medical transportation services (hereinafter "transportation"); and

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

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

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

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

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

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

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

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

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

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

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

## **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 7.5 % 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, group health insurance plans, private payments, credit cards, healthcare facilities or any person or entity submitting funds on a patient's account, OR any amounts paid directly to the Client with or without the knowledge of EMS|MC that are paid, tendered, received or collected each month for Client's transports, less refunds processed or any other necessary adjustments to those amounts.

EMS|MC shall submit an invoice to Client by the 10<sup>th</sup> 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 20<sup>th</sup> day of the month in which the invoice is first presented to Client. All invoices are to be paid directly from the Client's banking institution to EMS|MC via paper check or direct deposit to EMS|MC's bank account.

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

## **2.1 Software.**

### **(a.) emsCharts:**

EMS|MC will pay the full cost of emsCharts software including mobile and Cardiac Interface, based on Client's contract terms with emsCharts in effect as of the date of this Agreement. Future increases in the monthly base package software cost will be borne by Client unless EMS|MC specifically agrees to pay for such increase.

### **(b.) EMS ToolKit:**

EMS|MC will pay the full cost of EMS ToolKit for up to 130 users based on client's contract terms with EMS ToolKit in effect as of the date of the Agreement. Future increases in the monthly base package software cost will be borne by Client unless EMS|MC specifically agrees to pay for such increase.

### **3. RESPONSIBILITIES OF CLIENT.**

- (a) Client will provide EMS|MC with complete demographic and charge information necessary for the processing of professional and/or technical component billing to third parties and/or patients, including the following: patient identification (name, address, phone number, birth date, gender); guarantor identification and address; insurance information; report of services; special claim forms; pre-authorization numbers; and such additional information as is requested by EMS|MC.
- (b) In addition, Client shall provide complete medical record documentation necessary to insure proper billing and secure claim payment; secure authorizations and signatures, including consent to treat, assignment of benefits and release of information, and physician certification statements (PCS) forms for all non-emergency transports. The client will report to EMS|MC within ten (10) business days, payments received directly by client; and promptly notify EMS|MC of any cases requiring special handling or billing. The client must provide Patient Care Reports (PCR) in a timely manner in order to achieve higher performance. Client will implement any reasonable changes that EMS|MC determines to be necessary for the accurate completion of billing forms and related documentation; execute all forms required by Medicare, Medicaid, CHAMPUS, and any other payor or insurance carrier to allow EMS|MC to carry out its billing and other duties under this Agreement; and maintain client's own files with all original or source documents, as required by law. Client acknowledges that EMS|MC is not the agent of Client for storage of source documentation. Client will provide EMS|MC with a copy of any existing billing policy manuals or guidelines, Medicare or Medicaid reports, or any other record or document related to services or billing of client accounts.
- (c) In addition the Client is to provide EMS|MC with accurate medical records for each incident or patient service rendered for reimbursement [i.e. the Ambulance Call Report (ACR) or Patient Care Report (PCR)]. The PCR record must thoroughly detail the

patient's full medical condition at the time of service and include a chronological narrative of all services and treatment rendered. The Client attests that the PCR and any and all associated Medical Records, forms and certification statements provided to EMS/MC are true and accurate and contain only factual information observed and documented by the attending field technician during the course of the treatment and transport.

- (d) The Client will obtain any and all additional patient documentation required by Centers for Medicare and Medicaid Services ("CMS") or any other governmental or commercial payer for reimbursement consideration, including but not limited to a Physician Certification Statements (PCS) or other similar medical necessity forms or prior authorization statements as deemed necessary by the payer.

#### **4. TERM OF AGREEMENT.**

- (a) This Agreement shall be effective upon execution and shall thereafter continue through June 30, 2016. This Agreement shall be binding upon the parties hereto and their assigns, representatives, heirs and successors. The Agreement shall automatically renew on the same terms and conditions as stated herein, for successive one (1) year terms, unless either party gives written notice of intent not to renew at least 60 days before expiration of any term. Notwithstanding anything herein to the contrary, this Agreement may be terminated under the provisions, provided below, either for cause or by notice after the initial term, as further defined herein.
  - (i) **Termination for Cause.** Notwithstanding paragraph 5(a), this Agreement may be terminated by either party at any time for cause based on a material breach of a term or condition hereof by the other party which is not remedied by the other party within thirty (30) days of written notice describing the breach in reasonable detail. "Cause" shall include the following:

- (1) Failure of Client to make timely payments due under this Agreement;
- (2) Any willful damage to property, business, reputation, or good will of the other party hereto;
- (3) Willful injury to any customer, independent contractor, employee or agent of the other party hereto;
- (4) Solicitation of business on behalf of a competitor or potential competitor of the other party hereto;
- (5) Harassment of any contractor or commitment of any act which otherwise creates an offensive work environment for contractors;
- (6) Inattention to or neglect of the duties to be performed by each party, which inattention or neglect is not the result of illness or accident;
- (7) Failure to practice in accordance with the appropriate policies, standards and procedures established by the respective parties;
- (8) Commitment of any unethical or immoral act which disparages the other party or could have the effect of disparaging the other party; or
- (9) Any breach of any material provision of this Agreement.

**5. RESPONSIBILITIES UPON TERMINATION.**

- (a) Provided Client has paid all amounts due hereunder, upon any termination of this Agreement, and during the period of any notice of termination, EMSJMC will make available to Client or its authorized representatives, paper and electronic tape copies of information regarding open accounts, including accounts referred to an outside collection agency, and non-proprietary information

concerning payors and claims processing, (all without additional charge except for the cost of blank electronic tape and reasonable copy charges), and will otherwise furnish reasonable cooperation and assistance in any transition to Client, or its successor billing agent.

- (b) Following termination of this Agreement, for a period of ninety (90) days (the "Wind Down"), EMS|MC will continue its billing and collection efforts as to those accounts with dates of services prior to termination, subject to the terms and conditions of this Agreement, for the applicable fee set forth in paragraph 2(a). Client will continue to provide EMS|MC with copies of checks and payments on those accounts which were filed by EMS|MC under this agreement. EMS|MC shall have no further responsibilities as to such accounts after the Wind Down; however EMS|MC shall be entitled to compensation as provided in paragraph 2(a) for such amounts filed by EMS|MC, regardless of whether such amounts are collected by client during or after the Wind Down period. In the event Client has an outstanding balance owed to EMS|MC which is more than 45 days in arrears at the time of termination, EMS|MC shall have no obligation to provide any services after the date of termination.

**6. EXCLUSIVITY AND MISCELLANEOUS BILLING POLICIES.**

- (a) This Agreement to provide billing and collection services is made with EMS|MC as Client's exclusive provider for all dates of service during the term hereof. The Client may not directly file, submit or invoice for any Services rendered while this Agreement is in effect.
- (b) In addition, Client agrees not to collect or accept payment for services from any patient unless the service requested does not meet coverage requirements under any insurance program in which the patient is enrolled or the patient is uninsured. Payments received directly by Client for these services must be reported to EMS|MC as provided in paragraph 3(b) and shall be treated as Net Collections for purposes of paragraph 2(a).



- (c) In compliance with CMS regulations, Medicare patients will not be charged by Client a higher rate or amount for identical covered services charged to other insurers or patients. Accordingly, only one fee schedule shall exist and be used in determining charges for all patients regardless of insurance coverage.
- (d) EMS|MC reserves the right not to submit a claim for reimbursement on any patient in which the PCR and/or associated medical records are incomplete or appear to be inaccurate or do not contain enough information to substantiate or justify reimbursement. This includes missing patient demographic information, insurance information, physician certification statements (PCS) or any required crew and/or patient signatures, or otherwise contradictory medical information.
- (e) The Client shall implement and maintain a working compliance plan ("Compliance Plan") in accordance with the most current guidelines of the U.S. Department of Health and Human Services ("HHS"). The Compliance Plan must include, but not limited to, formal written policies and procedures and standards of conduct, designation of a compliance officer, quality assurance policy and effective training and education programs.
- (f) In accordance with the HHS Office of Inspector General ("OIG") Compliance Program Guidance for Third-Party Medical Billing Companies, EMS|MC is obligated to report misconduct to the government, if the billing company discovers credible evidence of the provider's continued misconduct or flagrant, fraudulent or abusive conduct. In the event of such evidence, EMS|MC has the right to refrain from (a) submitting any false or inappropriate claims, (b) terminate the contract and/or (c) report the misconduct to the appropriate authorities.

## **7. RESTRICTIVE COVENANT.**

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

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

**8.    PRIVACY.**

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

**9.    GENERAL.**

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

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

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

Notices. Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been given on the date delivered personally or deposited in the United States Postal Service, certified mail, return receipt requested, with adequate postage affixed, addressed as follows:

Client:  
Rowan County  
130 West Innes Street  
Salisbury, NC 28144-4375

EMS|MC:  
EMS Management & Consultants, Inc.  
2540 Empire Dr.  
Suite 100  
Winston-Salem, NC 27103

With Copy to:

Karen M. Wilson  
Wall Esleeck Babcock, LLP  
1076 West Fourth Street  
Winston Salem, NC 27101

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

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

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

Amendment and Waiver. This Agreement may be amended or modified only by an instrument signed by all of the parties. A waiver of any provision of this Agreement must be in writing, designated as such, and signed by the party against whom enforcement of the waiver is sought. The waiver of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent or other breach thereof.

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

EMS/INC:

CLIENT:

EMS Management & Consultants, Inc.

Rowan County

By: 

By: 

Title: CEO

Title: Rowan Co, NC

Date: 7/2/2013

Date: 6/27/13

THIS INSTRUMENT HAS BEEN PREAUDITED IN THE MANNER REQUIRED BY THE LOCAL GOVERNMENT BUDGET AND FISCAL CONTROL ACT.

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FINANCE DIRECTOR