

## ACTION FORM BRYAN CITY COUNCIL

<b>DATE OF COUNCIL MEETING:</b> January 14, 2014		<b>DATE SUBMITTED:</b> December 30, 2013	
<b>DEPARTMENT OF ORIGIN:</b> Fire		<b>SUBMITTED BY:</b> Randy McGregor	
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>	<b>STRATEGIC INITIATIVE:</b>
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input checked="" type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input checked="" type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> STATUTORY		<input type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input type="checkbox"/> INFRASTRUCTURE
			<input type="checkbox"/> QUALITY OF LIFE
<b>AGENDA ITEM DESCRIPTION:</b> Consideration – Ambulance Supplemental Payment Program.			
Consider approval of a contract with MED3000 to assist with the application process and reporting requirements of the Ambulance Supplemental Payment Program.			
<b>SUMMARY STATEMENT:</b> On September 24, 2013, the City of Bryan Purchasing Department issued a Request for Proposals (RFP) for assistance with the application process and reporting requirements of the Ambulance Supplemental Payment Program. The Purchasing Department received one (1) response for consideration. After careful review of the response it was determined that MED3000 met all requirements and responded to all parts of the RFB.			
Staff recommends a three (3) year contract with up to five (5) additional one (1) year periods. There is no upfront cost to the City for this service. The contractor would be paid 8% of the total funds received through this program.			
Note: The Ambulance Supplemental Payment Program is a new program made available through the Affordable Care Act (ACA), in particular the 1115 Waiver Program.			
<b>STAFF ANALYSIS AND RECOMMENDATION:</b> City staff recommends approving the contract with MED3000 to assist with the application process and reporting requirements of the Ambulance Supplemental Payment Program. The Bryan Fire and Finance Departments agree that participating in this program will benefit the City by bringing in additional funds that are currently being written off. The City could realize an increase in funds from the current ambulance transports of approximately \$800,000/year. The firm will be paid 8% of the funds that are paid as part of this program, which is approximately \$64,000/year. As this is a new program, comparisons from previous years is not available.			
<b>OPTIONS (In Suggested Order of Staff Preference):</b>			
1. Approve Contract			
2. Do not approve contract and provide direction to staff.			
<b>ATTACHMENTS:</b> MED3000 Contract and bid tabulations			
<b>FUNDING SOURCE:</b> There is no cost to the City as the fees are based on 8% of the funds generated by this program.			
<b>APPROVALS:</b> Hugh R. Walker, 12/30/2013			
<b>APPROVED FOR SUBMITTAL: CITY MANAGER</b> Kean Register, 12-30-2013			
<b>APPROVED FOR SUBMITTAL: CITY ATTORNEY</b> Janis K. Hampton, 12/30/2013			

## BUSINESS SUPPORT SERVICES AGREEMENT

This Business Support Services Agreement (“Agreement”) is effective as of the last date in the signature block below (the “Effective Date”), by and between MED3000, Inc., a Delaware corporation, whose mailing address is 680 Andersen Drive, Foster Plaza 10, Pittsburgh, Pennsylvania, 15220 (“MED3000”), and the City of Bryan, a Texas home-rule municipal corporation whose mailing address is P.O. Box 1000, Bryan, Texas 77805-1000 (“Client”).

### RECITALS

Client operates an Emergency Medical Services Squad (“EMS Squad”) that provides professional ambulance services. MED3000 is a subsidiary of MED3000 Group, Inc., a Delaware corporation (“MED3000 Group”), a national healthcare management and technology company. MED3000 is in the business of providing business support services to EMS Squads, provider networks, hospitals, physician groups and other healthcare providers. Client desires to retain MED3000 to provide business support services required by Client in accordance with the terms of this Agreement.

### STATEMENT OF AGREEMENT

In consideration of the promises and mutual covenants contained herein and other valuable consideration, the receipt, adequacy and legal sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, now agree as follows:

#### Article 1 – Obligations of MED3000.

Section 1.1. Services. Client retains MED3000 to the services set forth in Exhibits A1 attached hereto, as applicable (collectively, the “Services”) to Client. Client agrees that MED3000 is specifically authorized to engage MED3000 Group or one or more of its subsidiaries to perform the Services hereunder at no additional cost to Client.

Section 1.2. Liabilities. MED3000 is not responsible for any Client expenses or liabilities except as specifically provided for in this Agreement. Client is responsible for paying all expenses and liabilities relating to Client as specifically provided for in this Agreement or approved in an authorized writing in advance.

Section 1.3. Authority. Client grants MED3000 the authority and power to carry out its obligations under this Agreement. MED3000 shall provide the Services in accordance with applicable legal and regulatory requirements throughout the term of this Agreement.

Section 1.4. Limitations. MED3000 shall employ or retain such personnel/employees as it deems necessary to perform the Services. Client recognizes that the Services provided by such personnel/employees may be part-time in nature and that the personnel/employees serving in these capacities may serve in other capacities as well. MED3000 may propose that certain titles be conferred upon the employees in performing the duties under this Agreement. MED3000 retains the right to replace any personnel/employee who is performing Services hereunder with another person without causing a breach or termination of this Agreement. MED3000 may subcontract certain Services to support its provision of the Services under this Agreement, including but not limited to electronic data interchange and printing of statements, without Client’s approval; the Client shall receive advanced written notice in the event MED3000 subcontracts out the billing and reimbursement management Services.

## **Article 2 - Obligations of Client.**

Section 2.1. Agent. Client appoints MED3000 as its lawful attorney-in-fact solely for the purpose of carrying out MED3000's obligations set forth in this Agreement. Notwithstanding anything to the contrary herein, the parties understand, acknowledge, and agree that neither MED3000 nor any affiliate or agent of MED3000 has the ability to (a) receive payments of benefits assigned to Client directly from any payor pursuant to a power-of-attorney (as defined in Section 3060.10(A) of Medicare Carrier's Manual) or any other arrangement, or (b) transfer any payment of benefits assigned to Client to MED3000, its affiliates, or agents without the payment first passing through the Client's control.

Section 2.2. Professional Services. Notwithstanding the authority granted to MED3000 herein, Client shall retain the authority to render Emergency Medical Services ("EMS") and direct the medical and ethical aspects of Client's EMS practices and shall retain control of all business affairs that may not legally be carried on by persons other than those duly licensed to practice medicine or surgery in the state or states where such persons practice. Furthermore, the parties acknowledge that only Client may render EMS to its patients through its employees and contractors who are duly licensed or otherwise legally authorized to render professional EMS within the state or states in which such persons practice. MED3000 agrees that it shall not act pursuant to this Agreement in a manner that interferes with the professional judgment of Client's EMS personnel.

## **Article 3 - Mutual Obligations.**

Section 3.1. Cooperation. Client's EMS personnel shall execute all documents and take all actions necessary to allow MED3000 to perform its duties under this Agreement.

Section 3.2. Business Associate. In compliance with their respective legal duties regarding the privacy and security of protected health information, MED3000 and Client agree to the obligations set forth in Exhibit C attached hereto.

## **Article 4 – Compensation.**

Section 4.1. Service Fees. Client shall pay MED3000 service fees as set forth in Exhibit B, attached hereto, for the Services provided in accordance with this Agreement.

Section 4.2. Reimbursement. Client shall reimburse MED3000 for any additional expenses that MED3000 incurs in connection with this Agreement when explicitly approved in an authorized writing in advance.

Section 4.3. Payment.

Section 4.3.1. Invoice. MED3000 shall provide Client with an annual invoice indicating the total amounts collected and paid into Client's depository account in the previous year and the amount of service fees due to MED3000 based on the actual amounts collected. Client shall pay the service fee to MED3000 within thirty (30) days from the date of receipt of the invoice.

Section 4.3.2. Disputed Amounts or Invoices. Client agrees to notify MED3000 of any disagreement with respect to billing within thirty (30) days of receiving the monthly invoice. If Client and MED3000 are unable to resolve the dispute before the date the service fees are due to MED3000, Client shall forward to MED3000 the undisputed amount and the disputed amount shall be placed by Client into an escrow account until the dispute is resolved. If the parties are unable to resolve the

dispute within sixty (60) days from the date the service fees are due to MED3000, MED3000 may suspend its obligations hereunder upon thirty (30) days written notice to Client.

#### **Article 5 – Term.**

Section 5.1. Term. The initial term of this Agreement shall commence on December 15, 2013 and shall terminate thirty-six (36) months thereafter. Unless earlier terminated as provided for in this Agreement, the term of this Agreement shall automatically extend for up to five (5) additional one (1) year terms, unless either party delivers to the other party, not less than thirty (30) days prior to the expiration of the preceding term, written notice of that party's intent not to extend the term of this Agreement.

#### **Article 6 – Termination.**

Section 6.1. Termination. MED3000 or Client may terminate this Agreement after timely notice to the other party, if the other party: (a) materially breaches this Agreement and fails to remedy, or fails to commence reasonable efforts to remedy, such breach within sixty (60) days after receiving notice of the breach from the terminating party, (b) infringes the terminating party's intellectual property rights and fails to remedy, or fails to commence reasonable efforts to remedy, such breach within ten days after receiving notice of the breach from the terminating party, (c) materially breaches this Agreement in a manner that cannot be remedied, or (d) commences dissolution proceedings or ceases to operate in the ordinary course of business. Except as otherwise provided above, termination of this Agreement will not affect the parties' rights and obligations under any other agreement executed by the parties prior or subsequent to such termination, and all such other agreements will remain in full force and effect unless and until their respective expiration or termination in accordance with their contractual terms.

Section 6.2. Effect of Termination. In the event of termination of this Agreement in accordance with Section 6 or non-renewal, all rights, duties and obligations of both parties shall cease effect as of the date of termination, except as otherwise provided in this Section 6.2. Within ten (10) business days following termination, MED3000 will deliver to Client a copy of the most current file backup in a printed and/or electronic media copy as agreed upon in writing by both parties, after payment of all outstanding invoices by Client. Client shall be responsible for the programming, debugging, testing, computer operations, and alternative media costs if a file is requested in a format other than the industry standard formats (i.e. ASCII or comma delimited). Client shall also be responsible for the shipping cost of Client's billing records in MED3000's possession after termination that are forwarded to any destination other than Client's address. Furthermore, following the termination of this Agreement and the expiration of the Post-Termination Period, the parties shall remain bound by the restrictions set forth in Section 7.

#### **Section 7 - Relationship of Parties.**

Section 7.1. Independent Contractor. Each party is an independent contractor of the other party. This Agreement will not be construed as constituting a relationship of employment, agency, partnership, joint venture or any other form of legal association. Neither party has any power to bind the other party or to assume or to create any obligation or responsibility on behalf of the other party or in the other party's name.

Section 7.2. Warranties. MED3000 warrants it will perform all Services in accordance with reasonable industry practices. The provisions of this Agreement are intended to state all of the rights and responsibilities between MED3000 and Client, and they take the place of and supersede all warranties, express or implied whether of merchantability, fitness or otherwise. With the exception of the above warranty, MED3000 makes and Client receives no warranty, express or implied. All warranties of merchantability and fitness for a particular purpose are hereby expressly excluded.

Section 7.3. Computer Systems. All programs, documentation, specifications, tapes, instruction manuals and similar material developed or used by MED3000 in connection with this Agreement (collectively, “Computer Systems”) are and shall remain the sole and exclusive property of MED3000. Nothing in this Agreement shall be construed as a license or transfer of such Computer Systems to Client. Upon termination of this Agreement for any reason, MED3000 shall have the right to retain all such Computer Systems and Client shall, upon the request of MED3000, deliver all such Computer Systems in its possession to MED3000. MED3000 shall use commercially reasonable efforts to cooperate in supplying source data to Client in the event Client transfers its business support function to another contractor.

Section 7.4. Confidentiality.

7.4.1. Use and Disclosure of Confidential Information. Each party may disclose to the other party Confidential Information. Except as expressly permitted by this Agreement, neither party will: (a) disclose the other party’s Confidential Information except (i) to its employees or contractors who have a need to know and are bound by confidentiality terms no less restrictive than those contained in this Section 7.4., or (ii) to the extent required by law following prompt notice of such obligation to the other party, or (b) use the other party’s Confidential Information for any purpose other than performing its obligations under this Agreement. Each party will use all reasonable care in handling and securing the other party’s Confidential Information and will employ all security measures used for its own proprietary information of similar nature. Following the termination of this Agreement, each party will, upon written request, return or destroy all of the other party’s tangible Confidential Information in its possession and will promptly certify in writing to the other party that it has done so.

7.4.2. Period of Confidentiality. The restrictions on use, disclosure and reproduction of Confidential Information set forth in Section 7.4 will, with respect to Confidential Information that constitutes a “trade secret” (as that term is defined under applicable law), be perpetual, and will, with respect to other Confidential Information, remain in full force and effect during the term of this Agreement and for three years following the termination of this Agreement.

7.4.3. Injunctive Relief. The parties agree that the breach, or threatened breach, of any provision of this Section 7.4 may cause irreparable harm without adequate remedy at law. Upon any such breach or threatened breach, a party will be entitled to injunctive relief to prevent the other party from commencing or continuing any action constituting such breach, without having to post a bond or other security and without having to prove the inadequacy of other available remedies. Nothing in this Section 7.4.3 will limit any other remedy available to either party.

7.4.4. Retained Rights. Client’s rights in the Services will be limited to those expressly granted in this Agreement. MED3000 and its suppliers reserve all intellectual property rights not expressly granted to Client. All changes, modifications, improvements or new modules made or developed with regard to the Services, whether or not (a) made or developed at Client’s request, (b) made or developed in cooperation with Client, or (c) made or developed by Client, will be solely owned by MED3000 or its suppliers. MED3000 retains title to all material, originated or prepared for the Client under this Agreement. Client is granted a license to use such materials in accordance with this Agreement.

Section 7.5. Covenant not to Employ. During the term of the Agreement, and until the two-year anniversary date of the effective date of termination of this Agreement, Client covenants and agrees it will not, without the advance written consent of MED3000, directly or indirectly, (i) induce or attempt to induce any MED3000 employee to terminate employment with MED3000; (ii) hire or participate in the hiring or interviewing of any MED3000 employee; (iii) provide names or other information about any MED3000 employee for the purpose of assisting others to hire such employee; nor (iv) provide

Confidential Information to a MED3000 employee about MED3000 or any entity affiliated with MED3000 for the purpose of assisting that MED3000 employee in finding employment with such entity for EMS billing services. For purposes of this paragraph, a MED3000 employee means any person who is a current MED3000 employee or was employed by MED3000 within one (1) year of the date of any action that alleges a violation of this Section 7.5.

Section 7.6. Records. If required by Section 952 of the Omnibus Reconciliation Act of 1980, 42 U.S.C. Section 1395x(I)(i)(ii), for a period of four years after the Services are furnished, the parties agree that they, and each subcontractor who provides Services under this Agreement, will make available, upon the written request of the Secretary of Health and Human Services, the Comptroller General, or their representatives, this Agreement and such books, documents, and records as may be necessary to verify the nature and extent of any combination of Services and Products with an aggregate value or cost of \$10,000 or more over a twelve month period.

Section 7.7. Limitation of Liability. CLIENT AGREES THAT MED3000 SHALL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES CAUSED IN WHOLE OR IN PART BY FACTORS NOT WITHIN THE DIRECT CONTROL OF MED3000, INCLUDING BUT NOT LIMITED TO THE FAILURE OF THIRD PARTY SERVICE PROVIDERS TO ADEQUATELY PROVIDE THE SERVICES. MED3000 SHALL HAVE NO LIABILITY TO CLIENT OR ANY THIRD PARTY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, OR INCIDENTAL DAMAGES OR FOR ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE OR PROFITS, ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT SHALL MED3000 BE LIABLE IN THE AGGREGATE FOR ANY CLAIMS OR DAMAGES IN AN AMOUNT EXCEEDING THE AMOUNTS PAID BY CLIENT FOR SERVICES HEREUNDER DURING THE ONE (1) MONTH IMMEDIATELY PRECEDING SUCH CLAIM OR DAMAGES.

Section 7.8. Exclusivity. During the term of this Agreement Client shall not directly or indirectly contact an entity or person for the purpose of soliciting such entity or person to enter into a contract or arrange to receive any of the Services as set forth in this Agreement or any services substantially similar to the Services from any entity or person other than MED3000 unless agreed upon in writing by MED3000, except that Client shall be entitled to solicit bids from other suppliers of Services within 180 days of expiration of any term of this Agreement. This section does not apply to primary billing for EMS services or for debt collection services for invoices that have been written off.

## **Section 8 – Miscellaneous.**

Section 8.1. Notices. All notices relating to the parties' legal rights and remedies under this Agreement will be provided in writing and will reference this Agreement. Such notices will be deemed given if sent by: (a) postage prepaid registered or certified U.S. Post mail, then five working days after sending; or (b) commercial courier, then at the time of receipt confirmed by the recipient to the courier on delivery. All notices to Client will be sent to its address set forth on the cover page hereto, or to such other address as may be designated by Client by notice to MED3000.

Section 8.2. Force Majeure. Except as otherwise provided, neither party will be responsible for or in breach due to delays or failures to perform resulting either directly or indirectly from any cause beyond the control of the delaying or non-performing party, including but not limited to, acts of God, fires, floods, strikes, lockouts, labor controversies (beyond the control of the delaying or non-performing party), civil disturbances, acts of war, governmental restrictions, shortages or inability to obtain adequate supplies or transportation or transmission facilities (beyond the control of the delaying or non-performing

party), or other similar circumstances. In the event of delay in performance due to any such cause, the time for performance will be extended for a period of time reasonably necessary to overcome the effect of such delay.

Section 8.3. Conflicts. The provisions of this Agreement shall govern when there is any conflict with the provisions of any purchase order or other document of Client relating to the Services.

Section 8.4. Governing Law. This Agreement, and all rights and obligations of the parties hereunder, shall be construed and governed by the laws of the State of Texas, without regard to its conflicts of laws provisions.

Section 8.5. Severability. If any part of a provision of this Agreement is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the remainder of that provision and all other provisions of this Agreement and will not be affected.

Section 8.6. Descriptive Headings and Subheadings. Both parties understand that the headings and subheadings used in this Agreement are for descriptive and/or informational purposes only.

Section 8.7. Waiver. No consent or waiver, whether expressed or implied, by either party to or of any breach under this Agreement shall be construed as a consent or waiver to or of any breach of the same or any other obligation.

Section 8.8. Final Understanding and Modifications. This Agreement represents the entire and integrated agreement of the parties, and supersedes all prior negotiations, representations, and/or agreements, whether written or oral.

Section 8.9 Assignment and Subcontracts. Client may assign this Agreement with at least 60 days' prior written notice to MED3000, so long as Client remains secondarily liable for any and all executory obligations under this Agreement. MED3000 may, upon notice to Client, assign this Agreement to any MED3000 affiliate for any reason, or to any other entity as the result of a transfer of all or substantially all of MED3000's assets or capital stock or of any other corporate reorganization. MED3000 may subcontract its obligations under this Agreement.

Section 8.10. Amendments; Waiver. This Agreement may not be modified, nor shall any provision hereof be waived or amended, except by written addendum to this Agreement, duly signed by authorized representatives of the parties.

Section 8.11. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations or liabilities whatsoever.

Section 8.12. Compliance with Law. The obligations of MED3000 pursuant to this Agreement shall be subject to any limitations or restrictions which may be imposed by law or regulation, and MED3000 may suspend any or all obligations hereunder in the event that it reasonably determines, upon advice of counsel, that the performance of any obligation pursuant to this Agreement may contravene applicable law or regulation, the effect of which would be to have a material adverse effect on the business, financial condition, or operations of MED3000 or any subsidiary or affiliate of MED3000 Group.

Section 8.13. Material Changes; Periodic Review. Notwithstanding anything to the contrary in this Agreement, in the event (i) a significant change or amendment to any regulation, law, policy or procedure, (ii) any legal or ethical rule or regulation is promulgated or modified, or (iii) any

administrative ruling or judicial interpretation is issued or modified that prohibits any act or course of conduct contemplated by this Agreement, or which materially and adversely affects the ability of MED3000 to provide Services hereunder or imposes onerous financial or other burdens on MED3000's provision of Services hereunder, an amendment or modification to this Agreement shall be negotiated in good faith. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangements between Client and MED3000.

Section 8.14. Agreement Construction. This Agreement shall not be presumptively construed for or against either party. The parties may execute this Agreement in one or more counterparts, each of which will be deemed an original and one and the same instrument.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF the parties hereto have caused this Business Support Services Agreement to be executed by their respective duly authorized representatives on the date first above written.

<b>MED3000, Inc.</b>  <b>Address:</b> <b>680 Andersen Drive, Foster Plaza 10</b> <b>Pittsburgh, PA 15220</b>	<b>City of Bryan, Texas</b>  <b>Address:</b> <b>300 S. Texas Avenue</b> <b>Bryan, Texas 77803</b>
_____ <b>Signed</b>	_____ <b>Signed</b>
_____ <b>Name</b>	_____ <b>Jason Bienski</b>
_____ <b>Title</b>	_____ <b>Mayor</b>
_____ <b>Date</b>	_____ <b>Date</b>

ATTEST:

\_\_\_\_\_  
Mary Lynne Stratta, City Secretary

Approved As To Form:

\_\_\_\_\_  
Janis K. Hampton, City Attorney

# BUSINESS SUPPORT SERVICES AGREEMENT

## EXHIBIT A-1

### SUPPLEMENTAL PAYMENT RECOVERY ASSISTANCE SERVICES

#### 1. Description of Services.

As part of the MED3000's Supplemental Payment Assistance Services, MED3000's responsibilities under this Agreement will include:

- (a) Advising and assisting Client with enrolling in the Texas Medicaid Supplemental Payment Program;
- (b) Assisting Client with enrolling in the Texas Ambulance Supplemental Payment Program ("ASPP");
- (c) Managing the program applications and required cost reports for Client in accordance with the ASPP;
- (d) Managing the ASPP pre-cost report submittal process for Client, which may also include:
  - Developing and submitting the Provider Approval materials to the Texas Health and Human Services Commission ("HHSC") on behalf of Client;
  - Receiving the Provider Approval from HHSC for Client's participation in the ASPP;
  - Developing and submitting the Cost Allocation Model and Report to HHSC on behalf of Client for review as part of the ASPP;
  - Changing and finalizing the Cost Allocation Model during HHSC's review of the Cost Allocation Model and Report, to meet HHSC's requirements to move forward with the cost report submittal.
- (e) Assisting Client in developing cost models for EMS transports for submission to ASPP;
- (f) Assisting Client with submitting other annual reports as my required by the ASPP.
- (g) Ensuring that cost report preparer(s) engaged on behalf of Client by MED3000 are certified in accordance with all applicable rules, laws and regulations.
- (h) Ensuring that it utilizes separate staff for all billing and cost report preparation services provided to Client.

#### 2. Client Responsibilities.

Client acknowledges and understands that inaccurate or false data submissions, even advertent ones, can lead to a false claim charge or Medicaid program exclusion. Therefore, Client agrees that it will use best efforts to:

- (a) Ensure the accuracy of all cost report data provided by Client to MED3000 and provide written certification of the accuracy of such data to MED3000 and all applicable governmental agencies;
- (b) Make its internal practices, books and records relating to all cost report data provided to MED3000 by Client available to MED3000 to ensure the accuracy of all such data;
- (c) Comply with MED3000 policies and procedures for the documentation of all cost report data as established and provided to Client by MED3000 from time to time; and
- (d) Provide MED3000 with the following as part of Client's request for Supplemental Payment:
  - An organizational chart of Client's agency;
  - An organizational chart of Client's ambulance department;
  - Identification of the specific geographic service area covered by Client's ambulance department;

- Copies of job descriptions for all staff employed within Client's ambulance department and an estimated percentage of time spent working for Client's ambulance department and for other departments of Client's agency;
- Primary contact person for Client's agency; and
- A signed letter documenting the governmental provider's voluntary contribution of non-federal funds.

## **TO BUSINESS SUPPORT SERVICES AGREEMENT**

### **EXHIBIT B**

#### **FEES/COSTS**

1. For Supplemental Payment Recovery Assistance Services rendered under Exhibit A-1, Client will pay MED3000 a service fee equal to 8% of the Supplemental Payments recovered by MED3000 on behalf of Client, in accordance with Section 4 of the Agreement. Supplemental Payments shall include any payments for ambulance services, including all nonemergency and emergency patient transports that are reimbursed by Texas Medicaid to Client.
2. All service fees are exclusive of all federal, state and local taxes, including sales taxes, assessed on or due in respect of any Services performed by MED3000 under the Agreement, for which taxes Client shall be solely responsible. Client shall reimburse MED3000 for all those costs and expenses of Client paid by MED3000 or any subsidiary or affiliate of MED3000 Group on behalf of Client in connection with the provision of Services hereunder, provided that MED3000 shall first attempt to obtain any exemption available due to Client's being a tax-exempt organization. Client will assist MED3000 in obtaining any such exemption.
3. There will be a charge to the Client for requests, including but not limited to, requests for special programming and non-standard reports. The cost for such requests will be determined on an individual basis and shall be reimbursed in accordance with Section 4.2 of the Agreement. Any request from the Client that may result in charges must be made in writing. For any request that results in charges of \$25,000.00 or less, the written request may be approved by the City Manager. The City Council must approve any request that may result in charges over \$25,000.00.

## EXHIBIT C

### BUSINESS ASSOCIATE ADDENDUM (“BAA”)

#### SECTION 1: DEFINITIONS

“**Breach**” will have the same meaning given to such term in 45 C.F.R. § 164.402.

“**Designated Record Set**” will have the same meaning as the term “designated record set” in 45 C.F.R. § 164.501.

“**Electronic Protected Health Information**” or “**Electronic PHI**” will have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. § 160.103, as applied to the information that MED3000 creates, receives, maintains or transmits from or on behalf of Client.

“**Individual**” will have the same meaning as the term “individual” in 45 C.F.R. § 160.103 and will include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

“**Privacy Rule**” will mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

“**Protected Health Information**” or “**PHI**” will have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, as applied to the information created, received, maintained or transmitted by MED3000 from or on behalf of Client.

“**Required by Law**” will have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.

“**Secretary**” will mean the Secretary of the Department of Health and Human Services or his or her designee.

“**Security Incident**” will have the meaning given to such term in 45 C.F.R. § 164.304.

“**Security Rule**” will mean the Security Standards at 45 C.F.R. Part 160 and Part 164, Subparts A and C.

“**Unsecured PHI**” will have the same meaning given to such term under 45 C.F.R. § 164.402, and guidance promulgated thereunder.

**Capitalized Terms.** Capitalized terms used in this Addendum and not otherwise defined herein will have the meanings set forth in the Privacy Rule, the Security Rule, and the HIPAA Final Rule, which definitions are incorporated in this Addendum by reference.

#### SECTION 2: PERMITTED USES AND DISCLOSURES OF PHI

2.1 Uses and Disclosures of PHI Pursuant to the Underlying Agreement. Except as otherwise limited in this Addendum, MED3000 may use or disclose PHI to perform functions, activities or services for, or on behalf of, Client as specified in an existing written agreement (the “Underlying Agreement”), provided that such use or disclosure would not violate the Privacy Rule if done by Client.

2.2 Permitted Uses of PHI by MED3000. Except as otherwise limited in this Addendum, MED3000 may use PHI for the proper management and administration of MED3000 or to carry out the legal responsibilities of MED3000.

2.3 Permitted Disclosures of PHI by MED3000. Except as otherwise limited in this Addendum, MED3000 may disclose PHI for the proper management and administration of MED3000, provided that the disclosures are Required by Law, or MED3000 obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person (which purpose must be consistent with the limitations imposed upon MED3000 pursuant to this Addendum), and that the person agrees to notify MED3000 of any instances of which it is aware in which the confidentiality of the information has been breached. MED3000 may disclose PHI to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1).

2.4 Data Aggregation. Except as otherwise limited in this Addendum, MED3000 may use PHI to provide Data Aggregation services for the Health Care Operations of the Client as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

2.5 De-identified Data. MED3000 may de-identify PHI in accordance with the standards set forth in 45 C.F.R. § 164.514(b) and may use or disclose such de-identified data unless prohibited by applicable law.

### **SECTION 3: OBLIGATIONS OF MED3000**

3.1 Appropriate Safeguards. MED3000 will use appropriate safeguards and will, after the compliance date of the HIPAA Final Rule, comply with the Security Rule with respect to Electronic PHI, to prevent use or disclosure of such information other than as provided for by the Underlying Agreement and this Addendum. Except as expressly provided in the Underlying Agreement or this Addendum, MED3000 will not assume any obligations of Client under the Privacy Rule. To the extent that MED3000 is to carry out any of Client's obligations under the Privacy Rule as expressly provided in the Underlying Agreement or this Addendum, MED3000 will comply with the requirements of the Privacy Rule that apply to Client in the performance of such obligations.

3.2 Reporting of Improper Use or Disclosure, Security Incident or Breach. MED3000 will report to Client any use or disclosure of PHI not permitted under this Addendum, Breach of Unsecured PHI or any Security Incident, without unreasonable delay, and in any event no more than thirty (30) days following discovery; provided, however, that the Parties acknowledge and agree that this Section constitutes notice by MED3000 to Client of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below). "Unsuccessful Security Incidents" will include, but not be limited to, pings and other broadcast attacks on MED3000'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. MED3000's notification to Client of a Breach will include: (i) the identification of each individual whose Unsecured PHI has been, or is reasonably believed by MED3000 to have been, accessed, acquired or disclosed during the Breach; and (ii) any particulars regarding the Breach that Client would need to include in its notification, as such particulars are identified in 45 C.F.R. § 164.404.

3.3 MED3000's Agents. In accordance with 45 C.F.R. § 164.502(e)(1)(ii) and 45 C.F.R. § 164.308(b)(2), as applicable, MED3000 will enter into a written agreement with any agent or subcontractor that creates, receives, maintains or transmits PHI on behalf of MED3000 for services

provided to Client, providing that the agent agrees to restrictions and conditions that are substantially similar to those that apply through this Addendum to MED3000 with respect to such PHI.

3.4 Access to PHI. The Parties do not intend for MED3000 to maintain any PHI in a Designated Record Set for Client. To the extent MED3000 possesses PHI in a Designated Record Set, MED3000 agrees to make such information available to Client pursuant to 45 C.F.R. § 164.524, within ten (10) business days of MED3000's receipt of a written request from Client; provided, however, that MED3000 is not required to provide such access where the PHI contained in a Designated Record Set is duplicative of the PHI contained in a Designated Record Set possessed by Client. If an Individual makes a request for access pursuant to 45 C.F.R. § 164.524 directly to MED3000, or inquires about his or her right to access, MED3000 will either forward such request to Client or direct the Individual to Client.

3.5 Amendment of PHI. The Parties do not intend for MED3000 to maintain any PHI in a Designated Record Set for Client. To the extent MED3000 possesses PHI in a Designated Record Set, MED3000 agrees to make such information available to Client for amendment pursuant to 45 C.F.R. § 164.526 within twenty (20) business days of MED3000's receipt of a written request from Client. If an Individual submits a written request for amendment pursuant to 45 C.F.R. § 164.526 directly to MED3000, or inquires about his or her right to amendment, MED3000 will either forward such request to Client or direct the Individual to Client.

3.6 Documentation of Disclosures. MED3000 agrees to document such disclosures of PHI and information related to such disclosures as would be required for Client to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. MED3000 will document, at a minimum, the following information ("Disclosure Information"): (a) the date of the disclosure; (b) the name and, if known, the address of the recipient of the PHI; (c) a brief description of the PHI disclosed; (d) the purpose of the disclosure that includes an explanation of the basis for such disclosure; and (e) any additional information required under the HITECH Act and any implementing regulations.

3.7 Accounting of Disclosures. MED3000 agrees to provide to Client, within twenty (20) business days of MED3000's receipt of a written request from Client, information collected in accordance with Section 3.6 of this Addendum, to permit Client to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. If an Individual submits a written request for an accounting of disclosures of PHI pursuant to 45 C.F.R. § 164.528 directly to MED3000, or inquires about his or her right to an accounting, MED3000 will direct the Individual to Client.

3.8 Governmental Access to Records. MED3000 will make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by MED3000 on behalf of, Client available to the Secretary for purposes of the Secretary determining Client's compliance with the Privacy Rule and the Security Rule.

3.9 Mitigation. To the extent practicable, MED3000 will cooperate with Client's efforts to mitigate a harmful effect that is known to MED3000 of a use or disclosure of PHI by MED3000 that is not permitted by this Addendum.

3.10 Minimum Necessary. MED3000 will request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure, in accordance with 45 C.F.R. § 164.514(d), and any amendments thereto.

3.11 HIPAA Final Rule Applicability. MED3000 acknowledges that enactment of the HITECH Act, as implemented by the HIPAA Final Rule, amended certain provisions of HIPAA in ways that now

directly regulate, or will on future dates directly regulate, MED3000 under the Privacy Rule and Security Rule. MED3000 agrees, as of the compliance date of the HIPAA Final Rule, to comply with applicable requirements imposed under the HIPAA Final Rule, including any amendments thereto.

#### **SECTION 4: OBLIGATIONS OF CLIENT**

4.1 Notice of Privacy Practices. Client will notify MED3000 of any limitation(s) in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect MED3000's use or disclosure of PHI. Client will provide such notice no later than fifteen (15) days prior to the effective date of the limitation.

4.2 Notification of Changes Regarding Individual Permission. Client will obtain any consent or authorization that may be required by the Privacy Rule, or applicable state law, prior to furnishing MED3000 with PHI. Client will notify MED3000 of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect MED3000's use or disclosure of PHI. Client will provide such notice no later than fifteen (15) days prior to the effective date of the change.

4.3 Notification of Restrictions to Use or Disclosure of PHI. Client will notify MED3000 of any restriction to the use or disclosure of PHI that Client has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect MED3000's use or disclosure of PHI. Client will provide such notice no later than fifteen (15) days prior to the effective date of the restriction. If MED3000 reasonably believes that any restriction agreed to by Client pursuant to this Section may materially impair MED3000's ability to perform its obligations under the Underlying Agreement or this Addendum, the Parties will mutually agree upon any necessary modification of MED3000's obligations under such agreements.

4.4 Permissible Requests by Client. Client will not request MED3000 to use or disclose PHI in any manner that would not be permissible under the Privacy Rule, the Security Rule or the HITECH Act if done by Client, except as permitted pursuant to the provisions of Sections 2.2, 2.3, 2.4 and 2.5 of this Addendum.

#### **SECTION 5: TERM AND TERMINATION**

5.1 Term. The term of this Addendum will commence as of the Effective Date, and will terminate when all of the PHI provided by Client to MED3000, or created or received by MED3000 on behalf of Client, is destroyed or returned to Client. If it is infeasible to return or destroy PHI, MED3000 will extend the protections to such information, in accordance with Section 5.3.

5.2 Termination for Cause. Upon either Party's knowledge of a material breach by the other Party of this Addendum, such Party may terminate this Addendum immediately if cure is not possible. Otherwise, the non-breaching party will provide written notice to the breaching Party detailing the nature of the breach and providing an opportunity to cure the breach within thirty (30) business days. Upon the expiration of such thirty (30) day cure period, the non-breaching Party may terminate this Addendum if the breaching party does not cure the breach or if cure is not possible. If termination is not feasible, the non-breaching party may report the breach or violation to the Secretary.

5.3 Effect of Termination.

5.3.1 Except as provided in Section 5.3.2, upon termination of the Underlying Agreement or this Addendum for any reason, MED3000 will return or destroy all PHI received from Client, or created

or received by MED3000 on behalf of Client, at Client's expense, and will retain no copies of the PHI. This provision will apply to PHI that is in the possession of subcontractors or agents of MED3000.

5.3.2 If it is infeasible for MED3000 to return or destroy the PHI upon termination of the Underlying Agreement or this Addendum, MED3000 will: (a) extend the protections of this Addendum to such PHI and (b) limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as MED3000 maintains such PHI.

## **SECTION 6: COOPERATION IN INVESTIGATIONS**

The Parties acknowledge that certain breaches or violations of this Addendum may result in litigation or investigations pursued by federal or state governmental authorities of the United States resulting in civil liability or criminal penalties. Each Party will cooperate in good faith in all respects with the other Party in connection with any request by a federal or state governmental authority for additional information and documents or any governmental investigation, complaint, action or other inquiry.

## **SECTION 7: SURVIVAL**

The respective rights and obligations of MED3000 under Section 5.3 of this Addendum will survive the termination of this Addendum and the Underlying Agreement.

## **SECTION 8: AMENDMENT**

This Addendum may be modified, or any rights under it waived, only by a written document executed by the authorized representatives of both Parties. In addition, if any relevant provision of the Privacy Rule, the Security Rule or the HIPAA Final Rule is amended in a manner that changes the obligations of MED3000 or Client that are embodied in terms of this Addendum, then the Parties agree to negotiate in good faith appropriate non-financial terms or amendments to this Addendum to give effect to such revised obligations.

## **SECTION 9: EFFECT OF ADDENDUM**

In the event of any inconsistency between the provisions of this Addendum and the Underlying Agreement, the provisions of this Addendum will control. In the event that a court or regulatory agency with authority over MED3000 or Client interprets the mandatory provisions of the Privacy Rule, the Security Rule or the HIPAA Final Rule, in a way that is inconsistent with the provisions of this Addendum, such interpretation will control. Where provisions of this Addendum are different from those mandated in the Privacy Rule, the Security Rule, or the HIPAA Final Rule, but are nonetheless permitted by such rules as interpreted by courts or agencies, the provisions of this Addendum will control.