

**NORTHAMPTON COUNTY
REGULAR SESSION
September 19, 2016**

Be It Remembered that the Board of Commissioners of Northampton County met on September 19, 2016 with the following present: Fannie Greene, Chester Deloatch, and Robert Carter.

Others Present: Kimberly Turner, Scott McKellar and Komita Hendricks

Absent: Virginia Spruill, Joseph Barrett

Agenda Work Session:

A work session was held to discuss today's agenda items. Chairwoman Greene called upon County Manager Kimberly Turner for input. Ms. Turner had no changes. Chairwoman Greene called upon Commissioners for input. Commissioners had no changes. Chairwoman Greene called upon County Attorney Scott McKellar for input. Mr. McKellar had no changes.

Regular Session:

Chairwoman Greene called the meeting to order, welcomed everyone, and announced when citizens could make comments. Chairwoman Greene gave the Invocation and the Pledge of Allegiance was recited.

Approval of Regular Session Minutes for September 7, 2016:

A motion was made by Chester Deloatch and seconded by Robert Carter to approve the Regular Session Minutes for September 7, 2016. **Question Called: All present voting yes. Motion carried.**

Approval of Closed Session Minutes for September 7, 2016:

A motion was made by Robert Carter seconded by Chester Deloatch to approve the Closed Session Minutes for September 7, 2016. . **Question Called: All present voting yes. Motion carried.**

Approval of Agenda for September 19, 2016:

A motion was made by Chester Deloatch and seconded by Robert Carter to approve the agenda for September 19, 2016. **Question Called: All present voting yes. Motion carried.**

Introduction of New Employee-Finance:

Ms. Leslie Edwards, Finance Director, introduced Ms. Tameka Green, Assistant Finance Director, a new employee within the Finance Department.

Budget Amendments:

Ms. Leslie Edwards, Finance Director, appeared before Board to obtain approval of Budget Amendments #1-4 for Fiscal Year 2016-2017.

A motion was made by Robert Carter and seconded by Chester Deloatch that Budget Amendments #1-4 be approved as presented. **Question Called:** *All present voting yes.* **Motion carried.**

**PLEASE SEE SCANNED DOCUMENTS WHICH ARE
HEREBY MADE A PART OF THESE MINUTES:**

BUDGET AMENDMENT

DATE 08/24/16

JE-NO 2

GENERAL LEDGER ACCOUNT NUMBER		DEBIT		TO AMEND BUDGET	CREDIT	
				Fund 11		
				<u>Human Resources - Wellness Grant</u>		
113990	499000			Fund Balance Appropriated	3,767	00
114123	529000	183	00	Other Supplies		
114123	523000	1,354	00	Meeting Expense		
114123	534100	390	00	Printing		
114123	536000	157	00	Freight		
114123	539300	1,683	00	Other Services - Wellness Program		
				Bring forward grant funds from prior year		
		3,767	00		3,767	00

PREPARED BY Mary Bradley

POSTED BY Mary Bradley

APPROVED BY *Mary Bradley*
9/14/16

DATE 08/24/16

08/24/16

BOARD APPROVED _____

BUDGET AMENDMENT

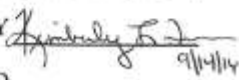
DATE 07/01/16

JE-NO 3

GENERAL LEDGER ACCOUNT NUMBER		DEBIT		TO AMEND BUDGET	CREDIT	
				Fund 11		
				<u>911 Radio Fund</u>		
113990	499000			Fund Balance Appropriated	264,300	00
114326	532100	800	00	Telephone		
114326	533100	1,500	00	Utilities - Electricity		
114326	535200	37,000	00	Maintenance Contract		
114326	555000	25,000	00	Equipment \$300 to \$4,995		
114326	582200	200,000	00	Reserve for 911 Radio Fund		
				Move funds forward from previous year balance		
		264,300	00		264,300	00

PREPARED BY Mary Bradley

POSTED BY Mary Bradley

APPROVED BY 

DATE 08/25/16

08/25/16

BOARD APPROVED _____

BUDGET AMENDMENT

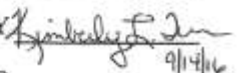
DATE 08/30/16

JE-NO 4

GENERAL LEDGER ACCOUNT NUMBER	DEBIT	TO AMEND BUDGET	CREDIT
		Fund 11	
		<u>Sheriff</u>	
113990 499000		Fund Balance Appropriated	3,400 00
114310 529005	3,400 00	K-9 Supplies	
		Move funds forward from previous year balance	
	3,400 00		3,400 00

PREPARED BY Mary Bradley

POSTED BY Mary Bradley

APPROVED BY 

DATE 08/30/16

08/30/16

BOARD APPROVED 9/1/16

Public Hearing- Rural Operating Assistance Program Application(ROAP):

Chairwoman Greene recessed the regular session to go into a Public Hearing.

Mrs. Joslyn Debraux-Reagor stated that the purpose of the public hearing is to receive and hear public comments in reference to the ROAP Grant Application for Fiscal Year 2016-2017.

Chairwoman Greene called for Commissioners comments.

Commissioner Robert Carter noted that no local match is required from the county for the funds.

Chairwoman Greene called for public comments.

None were heard.

Chairwoman Greene closed the Public Hearing to enter into regular session.

A motion was made by Chester Deloatch and seconded by Robert Carter to approve Northampton County Rural Operating Assistance Program (ROAP) Grant Application for Fiscal Year 2016-2017. **Question Called: All present voting yes. Motion carried.**

**PLEASE SEE SCANNED DOCUMENTS WHICH ARE
HEREBY MADE A PART OF THESE MINUTES:**

DECISION PAPER

TO: The Northampton County Board of Commissioners

FROM: Office on Aging

DATE: September 7, 2016

REFERENCE: Rural Operating Assistance Program Application

PURPOSE:

To obtain the Board's approval of the Northampton County Rural Operating Assistance Program (ROAP) Grant Application FY 2016-2017.

FACTS:

1. The Rural Operating Assistance Program (ROAP) consolidates the Elderly and Disabled Transportation Assistance Program, Rural General Public Transportation Program and Work Transitional-Employment Program into one application
2. Northampton County has been allocated \$58,961.00 for Elderly and Disabled Transportation Program, \$7,323.00 for the Employment program and \$57,606.00 for Rural General Public Transportation through the North Carolina Department of Transportation. This years' amount is \$12,737.00 more than last year.
3. No local match is required for Northampton County.
4. Choanoke Public Transportation Authority (CPTA) has applied for the Rural General Public funds and Aging has applied for the work first transitional-Employment funding.
5. It is the responsibility of the Northampton County Office on Aging Financial Advisory Board to recommend allocations and Service Providers for the elderly and Disabled Transportation funding. (Attachment 1).

Discussion:

The Elderly and Disabled Transportation Assistance Program provide transportation to seniors and disabled residents. The Employment program provides operating assistance for general public employment transportation needs. The Rural General Public Program provides

transportation services to individuals who are not human services agency clients. The Office on Aging Financial Advisory Board has prioritized transportation needs as medical, multipurpose, nutrition, education, employment and social, recreational for the elderly and Disabled Transportation Assistance Program.

Conclusion:

Approval of the Rural Operating Assistance Program (ROAP) applicants and recommended allocations will allow Northampton County to submit the grant application and thereby, continuing transportation services.

Recommendation:

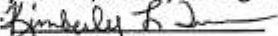
That the Board of County Commissioners approve the Rural Operating Assistance Program Application and recommended allocations as identified in Attachment 1.

Respectively submitted,

Joslyn Debraux-Reagor, Director

Coordination:


Kimberly Turner, County Manager

Concur: 

Concur with comments: _____

Non-Concur: _____


Leslie Edwards, County Finance Director

Concur: 

Concur with comments: _____

Non-Concur: _____

Joslyn Debraux-Reagor, Office on Aging Director

Concur: 

Concur with comments: _____

Non-Concur: _____

**Attachment 1
ROAP FY 2016-2017**

Elderly and Disabled Transportation Assistance Program

Provider	Funding
J. W. Faison Senior Center	\$33,961.00
Roanoke Valley Adult Day	<u>25,000.00</u>
	\$58,961.00

Employment transportation program

Provider	Funding
Aging	\$ 7,323.00

Rural General Public Transportation Program

Provider	Funding
CPTA	\$57,606.00
Total Allocated amount.....	\$ 123,890.00



Approval of 2015 Tax Collection Settlement (Unaudited):

Mrs. Cathy Allen, Tax Administrator, appeared before the Board to obtain approval of 2015 Tax Collection Settlement (Unaudited). Mrs. Allen noted that the collection rate is 95.18% for 2015.

A motion was made by Robert Carter and seconded by Chester Deloatch to approve this unaudited report for 2015 Tax Collection Settlement as presented by Tax Administrator, Mrs. Cathy Allen. **Question Called:** *All present voting yes.* **Motion carried.**

Approval of 2016 Tax Scroll:

Mrs. Cathy Allen, Tax Administrator, appeared before the Board to obtain approval of 2016 Tax Scroll.

A motion was made by Chester Deloatch and seconded by Robert Carter to approve the 2016 Scroll as presented by Mrs. Allen and adopt the following order directing the Tax Collector to collect the taxes charged in the tax records and receipts. **Question Called:** *All present voting yes.* **Motion carried.**

Adoption of 2016 Tax Collection Order:

Mrs. Cathy Allen, Tax Administrator, appeared before the Board to obtain approval of the 2016 Tax Collection Order.

A motion was made by Robert Carter and seconded by Chester Deloatch to approve this statement to Tax Collector of Northampton County be adopted. **Question Called:** *All present voting yes.* **Motion carried.**

Motor Vehicle Refunds:

Mrs. Cathy Allen, Tax Administrator, appeared before the Board to obtain approval to release or refund Ad Valorem taxes assessed in the amount of \$1,010.97 on 10 appeals.

A motion was made by Chester Deloatch and seconded by Robert Carter to approve the request from Mrs. Cathy Allen to refund \$1,010.97. **Question Called:** *All present voting yes.* **Motion carried.**

**PLEASE SEE SCANNED DOCUMENTS WHICH ARE
HEREBY MADE A PART OF THESE MINUTES:**

TO: NORTHAMPTON COUNTY BOARD OF
COMMISSIONERS/ ER

FROM: Tax Administrator

RE: Tax Collections 2015 Settlement (Unaudited)

DT: July 13, 2016

THIS IS A DECISION PAPER

PURPOSE: To obtain Board approval of the 2015 Settlement

FACTS: Included herein are Schedules 2, 3, 4, 5, 6, 7, and 8 which represent the various charges (taxes, fees and after-charges billed on tax bills) and credits, receipted deposits, releases, refunds, or write-offs for approval by the Board of Commissioners.

DISCUSSION: G.S. 105-373 (a) provides that a preliminary (sworn) report from the Tax Collector be provided to the governing body of the tax unit. That such report will contain analysis of current year taxes and delinquent tax status. That such report be presented after July 1 of the closing current collection year, but before the new charge is placed in the hands of the tax collector.

G. S. 105-373 (e) provides that approval by the governing body does not relieve the tax collector or his bondsman of liability for any shortage actually existing at the time of the settlement and thereafter discovered or of any criminal liability.

CONCLUSION: In the Third Edition of "PROPERTY TAX COLLECTION IN NORTH CAROLINA" by William F. Campbell, Mr. Campbell provides that it is the intent of the Machinery Act to create a direct relationship of responsibility and accountability between the tax collector and the governing body of his unit. The governing body must decide whether to accept his settlement report and accounting.

RECOMMENDATION: That the Board accept and approve this unaudited report which I hereby certify to be true and accurate to the best of my knowledge and belief as of June 30, 2016.

SCHEDULE OF AD VALOREM TAXES RECEIVABLE 2015-2016				
SCHEDULE 2				
YEAR	UNCOLLECTED BAL	ADDITIONS	COLLECTIONS AND CREDITS	UNCOLLECTED BAL 2015
2015		\$16,406,978.61	-\$15,812,713.13	\$794,265.48
2014	\$872,157.35		-\$331,310.89	\$540,846.46
2013	\$553,077.92		-\$162,048.39	\$391,029.53
2012	\$345,488.54		-\$72,367.54	\$273,121.00
2011	\$240,221.15		-\$42,598.83	\$197,622.32
2010	\$161,286.68		-\$22,297.88	\$138,988.80
2009	\$103,645.47		-\$10,687.48	\$92,957.99
2008	\$78,220.07		-\$7,534.73	\$70,685.34
2007	\$53,740.70		-\$5,126.52	\$48,614.18
2006	\$42,047.37		-\$3,040.72	\$39,006.65
2005	\$38,319.83		-\$1,702.13	\$36,617.70
	\$2,488,205.08	\$16,406,978.61	-\$16,271,428.24	\$2,623,755.45
UNFORCEABLE COLLECTIONS				
2004	\$33,428.88		-\$1,554.02	\$31,874.86
2003	\$32,134.70		-\$741.26	\$31,393.44
2002	\$32,039.76		-\$878.62	\$31,161.14
		TOTAL	-\$16,274,602.14	\$2,718,184.89
PLUS: Uncollected taxes on 2015-2016 motor vehicles				\$0.00
Less: Allowance for uncollectible accounts - General Fund				
RECONCILEMENT WITH REVENUES:				
Taxes Collected				16,228,299
Penalties				25,700
Discoveries, abatements, and adjustments (net)				224,114
Ad-Valorem write-off				-
Less Interest				(183,592)
Less Penalties Collected				(19,920)
TOTAL				16,274,602
TOTAL COLLECTIONS				
SCHEDULE 3				
ANALYSIS OF CURRENT YEAR TAX COLLECTION				
	PROPERTY VALUATION	RATE PER \$100	AMOUNT	
County Wide Orig. Levy	1,957,676,555	0.92	15,230,884	
Late Listing Penalty			11,247	
Public Utilities	112,132,104		1,031,655	
Discovery	7,558,466		93,422	
Discovery Penalty			11,429	
Rollback	2,905,651		26,665	
Motor Vehicles	182,256		1,677	
Less Def. Value	-269,640,659			
Less OA & DA Exempt	-32,505,450			
Total for Year	1,778,308,923		16,406,978	
COLLECTIONS AND CREDITS				
Rebates and Releases				81,625
Collections				-15,694,338
UNCOLLECTED AS OF				
06/30/16				
PERCENT CURRENT YEAR TAX COLLECTED				95.18
VEHICLES COLLECTED BY DMV				\$1,666,241.95

	Motor Vehicles	Ad-Valorem	Total
Total Levy	1,677	16,406,960	16,408,637
Less Uncollected 06/30/16	-1,674	-15,612,697	-15,614,371
Current Year Collected	3	794,263	794,266
PERCENT CURRENT YEAR COLLECTED	2015	99.83	95.16
%PRIOR YR COLL	2014	92.57	95.13
SCHEDULE 4 ANALYSIS OF CURRENT TAX LEVY (MOTOR VEHICLES) 2015			
	PROPERTY VALUATION	RATE PER \$100	LEVY AMOUNT
Motor Vehicle Levy	182,256	0.92	1,677
COLLECTIONS AND CREDITS			
Rebates and Releases			6
Collections			-1,681
			-1,675
UNCOLLECTED AS OF			
06/30/16			3
Percent Collected			99.83
COLLECTED BY DMV			\$1,391,548.86
SCHEDULE 5 ANALYSIS OF SOLID WASTE FEES			
		2014	2015
Prev Yr Levy		0	0
Current Yr Levy		2,156,079	2,143,230
Current Yr Discovery			
Total		2,156,079	2,143,230
Rebates & Releases		-7,819	-5,915
Collections		-1,876,044	-1,873,100
Total		-1,883,863	-1,879,014
UNCOLLECTED AS OF			
06/30/16		272,216	264,215
% COLLECTED		87.37	87.67
SCHEDULE 6 ANALYSIS OF ROANOKE WILDWOOD FIRE DISTRICTS F60/F61			
		2014	2015
Prev Yr Levy		0	0
F60 Cur Levy		139,492	141,774
F60 Additions			
Total		139,492	141,774
Rebates & Releases		-169	-77
Collections		-136,188	-138,512
Total		-136,357	-138,589
UNCOLLECTED AS OF			
06/30/15		3,135	3,185
% COLLECTED		97.75	97.75
COLLECTED BY DMV		3367.48	\$5,310.06

Prev Yr Levy			0	0
F81 Cur Levy			36,884	32,947
F81 Additions				
Total			36,884	32,947
Rebates & Releases			-6.98	-16.5
Collections			-35,777	-32,947
Total			-35,784	-32,963
UNCOLLECTED AS OF			1100	1306
06/30/16				
% COLLECTED			97.02	96.19
COLLECTED BY DMV			1251.33	\$1,251.33
SCHEDULE 6	ANALYSIS OF RICH SQUARE FIRE DISTRICT F56			
			2014	2015
Prev Yr Levy			0	0
Cur Yr Levy			55298	49482
Additions				
Total			55,298	49,482
Rebates & Releases			-301	-60.5
Collections			-50,260	-45,173
Total			-50,561	-45,234
UNCOLLECTED AS OF				
6/30/2016			4,740	4,248
% COLLECTED			91.43	91.41
COLLECTED BY DMV			6169.4	6,148
SCHEDULE 6	ANALYSIS OF GASTON FIRE DISTRICT F53			
			2014	2015
Prev Yr Levy			0	0
Cur Yr Levy			199,208	177,738
Additions				
Total			199,208	177,738
Rebates & Releases			-244	-68.42
Collections			-187,845	-168,422
Total			-188,089	-168,491
UNCOLLECTED AS OF				
6/30/2016			11,119	9,247
% COLLECTED			94.42	94.80
COLLECTED BY DMV			15184.74	16,431
SCHEDULE 6	ANALYSIS OF JACKSON FIRE DISTRICT F54			
			2014	2015
Prev Yr Levy			0	0
Cur Yr Levy			35,691	33,031
Additions				
Total			35,691	33,031
Rebates & Releases			97	-9.05
Collections			-33,678	-31,172
Total			-33,775	-31,181
UNCOLLECTED AS OF				
6/30/2016			1,917	1,850
% COLLECTED			94.63	94.40
COLLECTED BY DMV			6882.23	5,843

SCHEDULE 6 ANALYSIS OF GARYSBURG FIRE DISTRICT F52		2014	2015
Prev Yr Levy		0	0
Cur Yr Levy		67,502	78,628
Additions			
Total		67,502	78,628
Rebates & Releases		-83	-24.23
Collections		-63,091	-73,228
Total		-63,174	-73,253
UNCOLLECTED AS OF			
6/30/2016		4,328	5,376
% COLLECTED		93.59	93.16
COLLECTED BY DMV		6943.47	7,364
SCHEDULE 6 ANALYSIS OF LASKER FIRE DISTRICT F55		2014	2015
Prev Yr Levy		0	0
Cur Yr Levy		23,470	21,830
Additions			
Total		23,471	21,830
Rebates & Releases		-7	-4.15
Collections		-22,351	-20,597
Total		-22,358	-20,601
UNCOLLECTED AS OF			
6/30/2015		1,113	1,229
% COLLECTED		95.26	94.37
COLLECT BY DMV		2694.11	2,907
SCHEDULE 6 ANALYSIS OF SEABOARD FIRE DISTRICT F57		2014	2015
Prev Yr Levy		0	0
Cur Yr Levy		52,252	56,852
Additions			
Total		52,252	56,852
Rebates & Releases		-36	-130.44
Collections		-48,663	-52,961
Total		-48,699	-53,092
UNCOLLECTED AS OF			
6/30/2016		3,553	3,761
% COLLECTED		93.2	93.39
COLLECTED BY DMV		4832.94	5,332
SCHEDULE 6 ANALYSIS OF WOODLAND FIRE DISTRICT F59		2014	2015
Prev Yr Levy		0	0
Cur Yr Levy		48,533	44,459
Additions			
Total		48,533	44,459
Rebates & Releases		-48	-45.53
Collections		-43,557	-40,882
Total		-43,605	-40,928
UNCOLLECTED AS OF			
6/30/2016		4,929	3,532
% COLLECTED		89.84	92.06
COLLECTED BY DMV		6273.32	6,681

SCHEDULE 8 ANALYSIS OF TOWN LEVY (MOTOR VEHICLES)			
M51 CONWAY		2014	2015
Prev Yr Levy		0	0
Cur Yr Levy		4,463	0
Total		4,463	0
Rebates & Releases		0	0
Collections		-4,028	0
Total		-4,028	0
UNCOLLECTED AS OF 6/30/2016		435	0
% COLLECTED		90.26	0.00
CURRENT YEAR FEES PD TO TOWN		4,186.20	0.00
CURRENT YEAR FEES PD TO COUNTY		63.44	0.00
COLLECTED BY DMV		23643.5	22,402
M52 GARYSBURG		2014	2015
Prev Yr Levy		0	0
Cur Yr Levy		200	0
Total		200	0
Rebates & Releases		0	0
Collections		200	0
Total		200	0
UNCOLLECTED AS OF 6/30/2016		0	0
PERCENT COLLECTED		100.00	0.00
FEES PAID TO TOWN		206.92	0.00
FEES PAID TO COUNTY		3.15	0.00
COLLECTED BY DMV		29226.97	28,946
D52 GARYSBURG STICKER FEE		2014	2015
Prev Yr Levy		0	0
Cur Yr Levy		0	0
Total		0	0
Rebates & Releases		0	0
Collections		0	0
Total		0	0
UNCOLLECTED AS OF 6/30/2016		-	-
PERCENT COLLECTED		0.00	0.00
FEES PAID TO TOWN		29009.52	0.00
FEES PAID TO COUNTY		82.76	0.00
FEES COLLECTED BY DMV		6251.96	6,040

M53 GASTON		2014	2015
Prev Yr Levy		0	0
Cur Yr Levy		0	0
Total		0	0
Rebates & Releases		0	0
Collections		0	0
Total		0	0
UNCOLLECTED AS OF			
6/30/2016		0	0
PERCENT COLLECTED		0	0
FEES PAID TO TOWN		0.00	0.00
FEES PAID TO COUNTY		0.00	0.00
COLLECTED BY DMV		25325.67	26,914
D53 GASTON STICKER FEE		2014	2015
Prev Yr Levy		0	0
Cur Yr Levy		0	0
Total		0	0
Rebates & Releases		0	0
Collections		0	0
Total		0	0
UNCOLLECTED AS OF			
6/30/2016		-	-
PERCENT COLLECTED		0.00	0.00
FEES PAID TO TOWN		0.00	0.00
FEES PAID TO COUNTY		0	0
FEES COLLECTED BY DMV		3034.53	3,100
M54 JACKSON		2014	2015
Prev Yr Levy		0	0
Cur Yr Levy		0	0
Total		0	0
Rebates & Releases		0	0
Collections		0	0
Total		0	0
UNCOLLECTED AS OF			
6/30/2016		0	0
PERCENT COLLECTED		0.00	0.00
FEES PAID TO TOWN		25.64	25.64
FEES PAID TO COUNTY		0.39	0.39
COLLECTED BY DMV		59314.71	50,319

SCHEDULE 8 ANALYSIS OF TOWN LEVY (MOTOR VEHICLES)			
D54 JACKSON STICKER FEE		2014	2015
Prev Yr Levy		-	0
Cur Yr Levy		-	0
Total		-	0
Rebates & Releases		0	0
Collections		0	0
Total		0	0
UNCOLLECTED AS OF 6/30/2016		0	0
PERCENT COLLECTED		-	0
FEES PAID TO TOWN		0.00	0.00
FEES PAID TO COUNTY		0	0
FEES COLLECTED BY DMV		5318.94	3,875
M55 LASKER		2014	2015
Prev Yr Levy		0	0
Cur Yr Levy		13	0
Total		13	0
Rebates & Releases		0	0
Collections		-1	0
Total		-1	0
UNCOLLECTED AS OF 6/30/2016		14	0
PERCENT COLLECTED		0.00	0.00
FEES PAID TO TOWN		0.00	0.00
FEES PAID TO COUNTY		0.00	0.00
COLLECTED BY DMV		1613.87	1753
M56 RICH SQUARE		2014	2015
Prev Yr Levy		0	0
Cur Yr Levy		366	174
Total		366	174
Rebates & Releases		0	0
Collections		332	174
Total		332	174
UNCOLLECTED AS OF 6/30/2016		34	0
PERCENT COLLECTED		90.7	100
FEES PAID TO TOWN		332.04	332.04
FEES PAID TO COUNTY		5.05	5.05
COLLECTED BY DMV		34685.18	33,380

SCHEDULE 8 ANALYSIS OF TOWN LEVY (MOTOR VEHICLES)			
M57 SEABOARD		2014	2015
Prev Yr Levy		0	0
Cur Yr Levy		421	0
Total		421	0
Rebates & Releases		0	0
Collections		-375	0
Total		-375	0
UNCOLLECTED AS OF			
6/30/2015		47	0
PERCENT COLLECTED		89.2	0
FEES PAID TO TOWN		379.61	379.61
FEES PAID TO COUNTY		5.78	5.78
COLLECTED BY DMV		19128.01	17,396
D57 SEABOARD STICKER FEE		2014	2015
Prev Yr Levy		0	0
Cur Yr Levy		0	0
Additions			
Total		0	0
Rebates & Releases		0	0
Collections		0	0
Total		0	0
UNCOLLECTED AS OF		0	0
6/30/2016			
PERCENT COLLECTED		0.00	0.00
FEES PAID TO TOWN		0.00	0.00
FEES PAID TO COUNTY		0.00	0.00
FEES COLLECTED BY DMV		1856.15	1,825
M58 SEVERN		2014	2015
Prev Yr Levy		0	0
Cur Yr Levy		8,236	0
Total		8,236	0
Rebates & Releases		0	0
Collections		-7,876	0
Total		-7,876	0
UNCOLLECTED AS OF		360	0
6/30/2016			
PERCENT COLLECTED		95.63	0
FEES PAID TO TOWN		7,780.20	7,780.20
FEES PAID TO COUNTY		118.48	118.48
COLLECTED BY DMV		16197.09	16,010

SCHEDULE 8			
M59 WOODLAND	ANALYSIS OF TOWN LEVY (MOTOR VEHICLES)		
		2014	2015
Prev Yr Levy		0	0
Cur Yr Levy		0	0
Total		0	0
Rebates & Releases		0	0
Collections		0	0
Total		0	0
UNCOLLECTED AS OF 6/30/2016		0	0
PERCENT COLLECTED		0.00	0.00
FEEs PAID TO TOWN		0.00	0.00
FEEs PAID TO COUNTY		0	0
COLLECTED BY DMV		20,912.95	21,558
D59 WOODLAND STICKER FEE			
		2014	2015
Prev Yr Levy		0	0
Cur Yr Levy		0	0
Total		0	0
Rebates & Releases		0	0
Collections		0	0
Total		0	0
UNCOLLECTED AS OF 6/30/2016		0	0
PERCENT COLLECTED		0.00	0.00
FEEs PAID TO TOWN		0.00	0.00
FEEs PAID TO COUNTY		0	0
FEEs COLLECTED BY DMV		1845.25	1,755
C53 TOWN OF GASTON AD-VALOREM TAXES			
		2014	2015
Prev Yr Levy		0	0
Cur Yr Levy		200043	192497
Total		200,043	192,497
Rebates & Releases		-247	-219
Collections		-171826	-162966
Total		-172,072	-163,185
UNCOLLECTED AS OF 6/30/2016		27,971	29,312
PERCENT COLLECTED		86.02	84.77
FEEs PAID TO TOWN		165,763.35	165,763.35
FEEs PAID TO COUNTY		6,906.79	6,906.79

C55 TOWN OF LASKER AD-VALOREM TAXES		2014	2015
Prev Yr Levy		-	-
Cur Yr Levy		9385	8239
Total		9,385	8,239
Rebates & Releases		-1	-1
Collections		-8,797	-8,797
Total		-8,798	-8,518
UNCOLLECTED AS OF 6/30/2018		587	722
PERCENT COLLECTED		93.75	92.18
FEES PAID TO TOWN		8,485.14	8,485.14
FEES PAID TO COUNTY		353.56	353.56
C56 TOWN OF RICH SQUARE AD-VALOREM TAXES		2014	2015
Prev Yr Levy		0	0
Cur Yr Levy		284344.26	257184.02
Additions			
Total		284344.26	257184.02
Rebates & Releases			
Collections		-3,167	-36
		-255,899	-231,608
Total		-259,066	-231,644
UNCOLLECTED AS OF 6/30/2016		25,288	25,540
PERCENT COLLECTED		91.11	90.07
FEES PAID TO TOWN		246,617.89	246,617.89
FEES PAID TO COUNTY		10,275.75	10,275.75
C59 TOWN OF WOODLAND AD-VALOREM TAXES		2014	2015
Prev Yr Levy			
Cur Yr Levy		138130.64	123796.64
Additions			
Total		138130.64	123796.64
Rebates & Releases			
Collections		-357	-36
		-123,254	112,176
Total		-123,611	112,141
UNCOLLECTED AS OF 6/30/2016		14520.07	11584.46
PERCENT COLLECTED		89.49	90.64
FEES PAID TO TOWN		118,784.18	118,784.18
FEES PAID TO COUNTY		4,949.37	4,949.37

EXECUTIONS REPORT		2014	2015
TAX EXECUTIONS		145,216.43	103,889.57
SHERIFF FEES		781.62	628.22
TOTAL COLLECTED BY TAX DIVISION		145,998.05	104,517.79
OCCUPANCY TAX REPORT			
7/1/15 THRU 6/30/16		57,802.28	67,433.79
SOLID WASTE FEES REPORT			
		2014	2015
Prev Yr Levy			
Cur Yr Levy		2154562.39	2,143,229.61
Additions			
Total		2154562.39	2,143,229.61
Rebates & Releases		-7,819	-5,915
Collections		-1,876,044	-1,873,100
Total		-1,883,863	-1,879,014
UNCOLLECTED AS OF 6/30/2015		272215.98	264,215.35
PERCENT COLLECTED		87.37	87.67
Respectfully submitted,			
Cathy B. Allen Tax Administrator			
cc: Board of Commi Clerk to Board County Manager			
ACTION BY THE BOARD OF COMMISSIONERS:			
APPROVED _____			
DISAPPROVED _____			
OTHER _____			
SIGNATURE & DATE: _____			

DECISION PAPER

TO: NORTHAMPTON COUNTY BOARD OF EQUALIZATION AND REVIEW
FM: Cathy Allen, Tax Administrator
RE: Approval of the year 2016 Scroll
DT: August 18, 2016

THIS IS A DECISION PAPER

PURPOSE: To obtain the Board's approval of the 2016 Tax scroll.
FACTS: The Board has the duty to review and approve the tax list for the current year before adjourning, pursuant to G.S. 105-322 (g) (1)
DISCUSSION: The Assessor has prepared the 2016 Scroll and attached a copy hereto. The scroll summary shows the total assessed value for 2016 in the amount of 1,803,599,601. The levy, penalties and fees to be collected for 2016 and charged to the Tax Collector for collection as follows:

General County Government	\$16,617,587.15
Ahoskie Drainage	6,005.05
Town of Gaston	189,737.89
Town of Lasker	8,534.63
Town of Rich Square	257,306.31
Town of Woodland	125,042.28
Garysburg fire Service District	79,826.45
Gaston Fire Service District	187,128.07
Jackson Fire Service District	33,150.26
Lasker Fire Service District	21,463.75
Rich Square Fire Service District	49,528.67
Seaboard Fire Service District	57,230.98
Roanoke Wildwood Fire Service District	142,444.38
Roanoke Wildwood Fire Service District A	35,150.63
Woodland Fire Service District	45,794.25
Solid Waste Fees	<u>2,187,883.15</u>
TOTAL	\$20,043,813.90

RECOMMENDATION: That the Board approves the 2016 Scroll as presented and adopt the following order directing the Tax Collector to collect the taxes charged in the tax records and receipts.

ACTION BY THE BOARD:
APPROVED _____
DISAPPROVED _____
OTHER _____
SIGNATURE & DATE _____

Property Tax Billing
17 MAR 2016

Tax Users Report for All Transactions
MONTAHPIDN TAX DIST
RPTD500
Page 2

Regular Bills Only

Tax Code Information	Residential	Business	Utility	Total
CS9*10 - TOWN OF LAWRENCE	Levy 0.89 Pen 0.00	171.13 0.00	0.00 0.00	171.13 0.00
	Real Val 3,040,250 Perm Val 184,370 Exempt 103,370 Defer 872,415 Net Val 3,218,535	0 76,441 0 0 76,441	0 0 0 0 0	3,044,389 230,811 872,415 3,218,376
CS9*10 - TOWN OF RICH SQUARE	Levy 218.281.04 Pen 23.12	25,768.85 131.34	0.00 0.00	241,449.89 194.46
	Real Val 35,750,281 Perm Val 249,292 Exempt 1,422,480 Defer 929,029 Net Val 35,127,124	1,649,822 2,329,079 0 0 3,978,901	0 0 0 0 0	37,071,225 2,578,671 1,422,480 396,029 39,178,405
CS9*10 - TOWN OF WOODLAND	Levy 109.254.67 Pen 52.08	7,051.10 19.11	0.00 0.00	116,365.78 71.19
	Real Val 17,861,447 Perm Val 256,851 Exempt 404,321 Defer 430,276 Net Val 17,031,708	226,140 475,793 0 13,200 1,081,435	0 0 0 0 0	18,407,389 402,644 404,321 446,776 19,111,330
FS9*10 - GARVAGEUR FIRE DISTRICT	Levy 70.817.77 Pen 40.80	4,587.17 304.81	0.00 0.00	77,760.94 147.61
	Real Val 120,352,184 Perm Val 18,237,267 Exempt 3,334,376 Defer 17,022,876 Net Val 118,029,305	7,114,232 5,418,264 0 0 1,695,968	0 0 0 0 0	127,446,517 20,655,528 3,334,376 17,022,876 148,469,297
FS9*10 - GASTON FIRE DISTRICT	Levy 149.187.20 Pen 189.49	27,829.14 194.94	0.00 0.00	176,764.30 354.44
	Real Val 107,694,898 Perm Val 75,429,623 Exempt 5,071,714 Defer 22,028,528 Net Val 110,123,487	12,182,529 29,447,954 0 853,175 39,292,467	0 0 0 0 0	127,877,027 102,198,717 5,071,714 22,028,528 155,176,026

Property Tax Billing 17 AUG 2016		Tax Summary Report for All Townships NORTHAMPTON TAX DEPT			RPT0000 Page 1
Regular Bill Only					
Property Value		Residential	Business	Utility	Total
Real Property Value		1,670,126,455	68,551,579		1,738,678,034
Personal Property Value		154,453,793	98,440,060	0	252,893,853
Secured Property Value		1,670,126,455	68,551,579	0	1,738,678,034
Unsecured Property Value		154,453,793	98,440,060	0	252,893,853
Gross Total Property Value		1,824,580,248	166,991,639	0	1,991,571,887
Farm Deferred		265,821,140	4,540,250	0	270,361,390
Exemptions					
CB - CIRCUIT BREAKER DEFERMENT		470,175	0	0	470,175
DV - DISABLED VETERAN		2,533,480	0	0	2,533,480
GA - ELDERLY EXCLUSION		281,092,194	0	0	281,092,194
TD - TOTAL DISABLED		5,000,292	0	0	5,000,292
Total Exemptions		39,096,342	0	0	39,096,342
Net Total Property Value		1,536,861,942	160,951,289	0	1,697,813,231
School Value		0	0	0	0
Fire Value		1,400,942,413	115,228,438	0	1,516,170,851
Tax Code Information		Residential	Business	Utility	Total
AC014 - ANCHOR DRAINAGE	Levy	6.628 RR	476.17	0.00	6,008.08
	Pen	0.00	0.00	0.00	0.00
	Real Val	0	0	0	0
	Per Val	0	0	0	0
	Exempt	150,537	0	0	150,537
	Defer	0	0	0	0
	Net Val	150,537	0	0	150,537
CR014 - TOWN OF BARTON	Levy	148.214.15	31,946.76	0.00	180,161.01
	Pen	221.12	123.63	0.00	344.75
	Real Val	30,856,124	3,228,485	0	34,084,609
	Per Val	774,722	3,114,128	0	3,888,850
	Exempt	1,442,267	0	0	1,442,267
	Defer	356,145	0	0	356,145
	Net Val	29,413,857	3,228,485	0	32,642,342

Property Tax Billing 17 AUG 2016		Tax Billing Report For All Township NORTHAMPTON TAX DEPT			MPT0505 Page 4	
Register Bills Only						
Tax Code Information		Residential	Business	Utility	Total	
FA016 - ROWAND WILDMOOD FISCAL	Levy	141,832.67	423.04	0.00	142,255.71	
	Pen	134.17	9.09	0.00	143.26	
	Real Val	452,217,884	120,350	0	452,338,234	
	Pers Val	13,800,209	637,150	0	14,437,359	
	Exempt	3,335,732	0	0	3,335,732	
	Defer	8,326,000	0	0	8,326,000	
	Net Val	452,486,321	1,307,400	0	453,793,721	
GA016 - ROWAND WILDMOOD FISCAL	Levy	24,361.47	312.79	0.00	24,674.26	
	Pen	20.94	1.51	0.00	22.45	
	Real Val	111,160,462	231,297	0	111,391,759	
	Pers Val	2,907,565	473,691	0	3,381,256	
	Exempt	1,174,203	0	0	1,174,203	
	Defer	2,159,256	0	0	2,159,256	
	Net Val	110,520,989	1,005,090	0	111,526,079	
GD016 - GENERAL COUNTY TAX	Levy	14,047,322.89	1,479,670.34	0.00	15,526,993.23	
	Pen	19,263.33	9,014.87	0.00	28,278.20	
	Real Val	1,475,126,855	68,351,279	0	1,543,478,134	
	Pers Val	154,657,238	38,440,750	0	193,097,988	
	Exempt	32,079,478	0	0	32,079,478	
	Defer	248,821,163	6,145,258	0	254,966,421	
	Net Val	1,843,685,616	102,937,387	0	1,946,623,003	
HW016 - SOLID WASTE FISCAL	Levy	2,100,178.07	79,325.08	0.00	2,179,503.15	
	Pen	0.00	0.00	0.00	0.00	
	Real Val	0	0	0	0	
	Pers Val	0	0	0	0	
	Exempt	0	0	0	0	
	Defer	0	0	0	0	
	Net Val	0	0	0	0	
Total Levy		17,329,827.31	1,490,740.07	0.00	18,820,567.38	
Total Penalty		16,252.99	9,684.14	0.00	25,937.13	
Total Tax		17,346,080.30	1,500,424.21	0.00	18,846,504.51	

STATE OF NORTH CAROLINA
COUNTY OF NORTHAMPTON

To the Tax Collector of the County of **Northampton**:

You are hereby authorized, empowered, and commanded to collect the taxes set forth in the tax records filed in the office of the County Assessor and in the tax receipts herewith delivered to you on August 22, 2016, in the amounts of \$20,043,813.90 and from the taxpayers likewise therein set forth. Such taxes are hereby declared to be the first lien upon all real property of the respective taxpayers in the County of **Northampton**, and this order shall be a full and sufficient authority to direct, require, and enable you to levy on and sell any real or personal property of such taxpayers, for and on account thereof, in accordance with law.

Witness my hand and official seal, this _____ day of September, 2016.

Chairperson, Board of Commissioners of
Northampton County

(Seal)

Attest:

Clerk of Board of Commissioners of
Northampton County

DECISION PAPER

TO: NORTHAMPTON COUNTY BOARD OF COMMISSIONERS

FM: Cathy B. Allen, Tax Administrator

RE: Ad Valorem Tax Appeals

DT: August 30, 2016

THIS IS A DECISION PAPER.

PURPOSE: To obtain the Board's approval to release or refund Ad Valorem taxes assessed in the amount of \$1,010.97 on ten(10) appeals.

FACTS: Attached hereto is a listing of property owners who have requested that I appeal to the Board of Commissioners on their behalf for a release or refund of tax to which they seek relief as provided in G.S. 105-381.

DISCUSSION: G.S. 105-381 Provides that a taxpayer asserting a valid defense to the enforcement of the collection of a tax assessed upon his property may appeal to the Board of Commissioners for relief of such tax. Such appeal must be presented within five years after the tax first became due or within six months after the payment of such tax, whichever is later.

The Board of Commissioners may, upon receiving a taxpayer's written statement of a valid defense, release or refund such tax if the valid defense is one of the following:

- (1) A tax imposed through clerical error
- (2) An illegal tax
- (3) A tax levied for an illegal purpose

CONCLUSION: The Board of Commissioners have the authority to grant, release, or refund due to the above three reasons.

RECOMMENDATION: That the Board of Commissioners approve the request for release or refund of the Ad Valorem Tax appeals submitted herewith in the amounts and for the reasons stated on the listings.

Respectfully submitted,

CATHY B. ALLEN
TAX ADMINISTRATOR

ACTION BY THE BOARD OF COMMISSIONERS:

APPROVED _____
DISAPPROVED _____
OTHER _____

SIGNATURE & DATE: _____

August 30, 2016
Ad Valorem Tax Appeals

NAME	ACCOUNT	ACTION	AMOUNT	REASON
Crane, Herman Cecil	30133	Release	\$ 16.60	Double Listed
Graves, James	99819	Release	6.04	Double Listed
Hall, James E Jr	111488	Release	16.19	Listing Error
Howell, W H III	74742	Release	530.95	Registered
Judd, Bernice	31386	Release	97.20	Exempt. Not Calculated
Manley, Doris	70825	Release	43.72	Exempt. Not Calculated
Revelle, Gerald R	85905	Release	106.73	Listing Error
Ricks, Deborah	126511	Release	3.36	Listing Error
Sledge, Gloris Jean & Others	127401	Release	183.93	Exempt. Not Calculated
Wallis, Robert J	128604	Release	6.28	Listing Error
TOTAL REFUND/RELEASE			\$ 1,010.97	

Respectfully submitted,

CATHY B. ALLEN)
TAX ADMINISTRATOR

CBA/tr

Cc: Board of Commissioners (7)
County Manager (1)
Clerk to Board (6)

Deed of Easement to Dominion:

Mr. Jason Morris, Public Works Director, appeared before the Board to obtain approval of an Easement Deed requested by Dominion. Mr. Morris stated the purpose was to provide overhead electric to a solar farm.

A motion was made by Robert Carter and seconded by Chester Deloatch to approve and grant the easement to Dominion as noted in the Easement Deed. ***Question Called: All present voting yes. Motion carried.***

**PLEASE SEE SCANNED DOCUMENTS WHICH ARE
HEREBY MADE A PART OF THESE MINUTES:**

DECISION PAPER

To: Northampton County Board of Commissioners

From: Jason S. Morris, Public Works Director

Date: September 19, 2016

Reference: Deed of Easement to Dominion

Purpose: The purpose of this Decision Paper is to obtain approval by the Board of Commissioners for an easement deed requested from Dominion.

Facts:

1. Dominion is in need of an easement to cross a parcel of land where sewer pump station Number 1 is located in Garysburg to provide electricity to a solar farm project on US Hwy 301.
2. The proposed easement will cross parcel number 0401830 parallel and adjacent to Coleman St. fifteen feet in width. (see attached map with deed)

Discussion: Upon discussion with Dominion, said proposed utilities will not interfere with Northampton County's existing utilities on that site.

Recommendation: The Public Works Department recommends the Northampton County Board of Commissioners approve and grant the easement to Dominion as noted in Easement Deed.

Respectfully submitted,



Jason S. Morris
Public Works Director

Coordination:

Finance Officer

Concur Roslie A. Edwards

Non-concur _____

Concur with comment _____

County Manager

Concur Kimberly L. Jones 9/12/16

Non-concur _____

Concur with comment _____

Action by Decision Makers

Approved _____

Disapprove _____

Other _____



Right of Way Agreement

THIS RIGHT OF WAY AGREEMENT, is made and entered into this _____ day of _____, _____, by and between

NORTHAMPTON COUNTY, NC

("GRANTOR") and VIRGINIA ELECTRIC AND POWER COMPANY, a Virginia public service corporation, doing business in North Carolina as Dominion North Carolina Power, with its principal office in Richmond, Virginia ("GRANTEE").

WITNESSETH:

1. That for and in consideration of the sum of One Dollar (\$1.00) cash in hand paid and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, GRANTOR grants and conveys unto GRANTEE, its successors and assigns, the perpetual right, privilege and non-exclusive easement over, under, through, upon and across the property described herein, for the purpose of transmitting and distributing electric power by one or more circuits; for its own internal telephone and other internal communication purposes directly related to or incidental to the generation, distribution, and transmission of electricity, including the wires and facilities of any other public service company in aid of or to effectuate such internal telephone or other internal communication purposes; and for lighting purposes; including but not limited to the right:

Initials: _____

This Document Prepared by Virginia Electric and Power Company and should be returned to: Dominion North Carolina Power, 200 W. Vepco St. Roanoke Rapids, NC 27870.

(Page 1 of 5 Pages)
DNCPIDNo(s). 61-16-0033

Right of Way Agreement

1.1 to lay, construct, operate and maintain one or more lines of underground conduits and cables including, without limitation, one or more lighting supports and lighting fixtures as **GRANTEE** may from time to time determine, and all wires, conduits, cables, transformers, transformer enclosures, concrete pads, manholes, handholes, connection boxes, accessories and appurtenances desirable in connection therewith; the width of said easement shall extend FIFTEEN (15') feet in width across the lands of **GRANTOR**; and

1.2 to construct, operate and maintain a pole line including, without limitation, all wires, poles, attachments, ground connections one or more lighting supports and lighting fixtures as **GRANTEE** may from time to time deem advisable, equipment, accessories and appurtenances desirable in connection therewith, including the right to increase or decrease the number of wires; the width of said easement shall extend FIFTEEN (15') feet in width across the lands of **GRANTOR**.

2. The easement granted herein shall extend across the lands of **GRANTOR** situated in NORTHAMPTON COUNTY, North Carolina, as more fully described on Plat(s) Numbered 61-16-0033, attached to and made a part of this Right of Way Agreement; the location of the boundaries of said easement being shown in broken lines on said Plat(s), reference being made thereto for a more particular description thereof.

3. All facilities constructed hereunder shall remain the property of **GRANTEE**. **GRANTEE** shall have the right to inspect, reconstruct, remove, repair, improve, relocate on the easement, and make such changes, alterations, substitutions, additions to or extensions of its facilities as **GRANTEE** may from time to time deem advisable.

4. **GRANTEE** shall have the right to keep the easement clear of all buildings, structures, trees, roots, undergrowth and other obstructions which would interfere with its exercise of the rights granted hereunder, including, without limitation, the right to trim, top, retrim, retop, cut and keep clear any trees or brush inside and outside the boundaries of the easement that may endanger the safe and proper operation of its facilities. All trees and limbs cut by **GRANTEE** shall remain the property of **GRANTOR**.

5. For the purpose of exercising the right granted herein, **GRANTEE** shall have the right of ingress to and egress from this easement over such private roads as may now or hereafter exist on the property of **GRANTOR**. The right, however, is reserved to **GRANTOR** to shift, relocate, close or abandon such private roads at any time. If there are no public or private roads reasonably convenient to the easement, **GRANTEE** shall have such right of ingress and egress over the lands of **GRANTOR** adjacent to the easement. **GRANTEE** shall exercise such rights in such manner as shall occasion the least practicable damage and inconvenience to **GRANTOR**.

Initials: _____

(Page 2 of 5 Pages)
DNCPIDNo(s). 61-16-0033

Form No. 721043-2 (Jun 2015)
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Right of Way Agreement

6. **GRANTEE** shall repair damage to roads, fences, or other improvements (a) inside the boundaries of the easement (subject, however, to **GRANTEE's** rights set forth in Paragraph 4 of this Right of Way Agreement) and (b) outside the boundaries of the easement and shall repair or pay **GRANTOR**, at **GRANTEE's** option, for other damage done to **GRANTOR's** property inside the boundaries of the easement (subject, however, to **GRANTEE's** rights set forth in Paragraph 4 of this Right of Way Agreement) and outside the boundaries of the easement caused by **GRANTEE** in the process of the construction, inspection, and maintenance of **GRANTEE's** facilities, or in the exercise of its right of ingress and egress; provided **GRANTOR** gives written notice thereof to **GRANTEE** within sixty (60) days after such damage occurs.

7. **GRANTOR**, its successors and assigns, may use the easement for any reasonable purpose not inconsistent with the rights hereby granted, provided such use does not interfere with **GRANTEE's** exercise of any of its rights hereunder. **GRANTOR** shall not have the right to construct any building, structure, or other above ground obstruction on the easement; provided, however, **GRANTOR** may construct on the easement fences, landscaping (subject, however, to **GRANTEE's** rights in Paragraph 4 of this Right of Way Agreement), paving, sidewalks, curbing, gutters, street signs, and below ground obstructions as long as said fences, landscaping, paving, sidewalks, curbing, gutters, street signs, and below ground obstructions do not interfere with **GRANTEE's** exercise of any of its rights granted hereunder. In the event such use does interfere with **GRANTEE's** exercise of any of its rights granted hereunder, **GRANTEE** may, in its reasonable discretion, relocate such of its facilities as may be practicable to a new site designated by **GRANTOR** and acceptable to **GRANTEE**. In the event any such facilities are so relocated, **GRANTOR** shall reimburse **GRANTEE** for the cost thereof and convey to **GRANTEE** an equivalent easement at the new site.

8. **GRANTEE** shall have the right to assign or transfer, without limitation, to any public service company all or any part of the perpetual right, privilege and easement granted herein.

9. If there is an Exhibit A attached hereto, then the easement granted hereby shall additionally be subject to all terms and conditions contained therein provided said Exhibit A is executed by **GRANTOR** contemporaneously herewith and is recorded with and as a part of this Right of Way Agreement.

10. Whenever the context of this Right of Way Agreement so requires, the singular number shall mean the plural and the plural the singular.

Initials: _____

(Page 3 of 5 Pages)
DNCPIDNo(s). 61-16-0033

Form No. 721043-3 (Jun 2015)
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Right of Way Agreement

11. GRANTOR covenants that it is seised of and has the right to convey this easement and the rights and privileges granted hereunder; that GRANTEE shall have quiet and peaceable possession, use and enjoyment of the aforesaid easement, rights and privileges; and that GRANTOR shall execute such further assurances thereof as may be reasonably required.

12. The individual executing this Right of Way Agreement on behalf of GRANTOR warrants that they have been duly authorized to execute this easement on behalf of said County.

IN WITNESS WHEREOF, GRANTOR has caused its name to be signed hereto by authorized officer, or agent, described below, on the day first above written.

APPROVED AS TO FORM:

COUNTY OF NORTHAMPTON

By: _____

Title: _____

(Name)

(Title)

State of _____

County of _____, to-wit:

I, _____, a Notary Public in and for the State of _____ at Large, do hereby certify that this day personally appeared before me in my jurisdiction aforesaid

(Name of officer or agent)

(Title of officer or agent)

on behalf of NORTHAMPTON County, North Carolina, whose name is signed to the foregoing writing dated this _____ day of _____, 20____, and acknowledged the same before me.

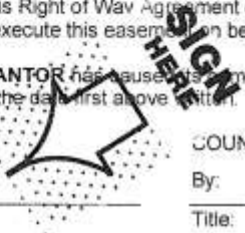
Given under my hand _____, 20____.

Notary Public (Print Name)

Notary Public (Signature)

My Commission Expires: _____

(Page 4 of 5 Pages)





OWNER:
NORTHAMPTON
COUNTY,
UTILITIES
North
CAROLINA

OWNER INITIALS:

TO HILL TOP DR.
US HWY 301
TO US HWY 158E

NOT TO SCALE

This map is not a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations.

Legend

- Location of Boundary Lines of Right-of-Way
30' in Width
- Indicates Property Line is Right-of-Way
Boundary
30' in Width

Plat to Accompany Right-of-Way Agreement		
VIRGINIA ELECTRIC AND POWER COMPANY doing business as Dominion North Carolina Power OH/UG		
District ROANOKE		
District-Township-Borough	County-City	State
GARYSBURG TWN	NORTHAMPTON	NC
Office	Plot Number	
ROANOKE RPDS	61-16-0033	
Estimate Number	Grid Number	
7681614	02245	
Date: 8/17/16	By: HAMIL/HURST	

Health Department Rates:

Mr. Andy Smith, Health Department Director, appeared before the Board to obtain approval of proposed clinic rates to be effective August 15, 2016.

A motion was made by Chester Deloatch and seconded by Robert Carter to approve the Health Department rate increase. **Question Called: All present voting yes. Motion carried.**

Approval of Contract with Valley Rehab Services, Inc:

Mr. Andy Smith, Health Department Director, appeared before the Board to obtain approval of an agreement between Northampton County Health Department's Home Health Agency and Valley Rehab Services, Inc. for the purpose of providing physical therapy services to home health patients.

A motion was made by Robert Carter and seconded by Chester Deloatch to approve the proposed contract between Northampton County Health Department's Home Health Agency and Valley Rehab Services, Inc. for physical therapy services as presented. **Question Called: All present voting yes. Motion carried.**

Approval of Cure MD Contract:

Mr. Andy Smith, Health Department Director, appeared before the Board to obtain approval of agreement between Northampton County Health Department's and Carolinas IT, Inc. for the purpose of providing an electronic health records (EHR) system.

A motion was made by Chester Deloatch and seconded by Robert Carter to approve the agreement between Northampton County Health Department and Carolinas IT, Inc. (CureMD.com) for the purpose of providing an electronic health records (EHR) system. **Question Called: All present voting yes. Motion carried.**

**PLEASE SEE SCANNED DOCUMENTS WHICH ARE
HEREBY MADE A PART OF THESE MINUTES:**



NORTHAMPTON COUNTY HEALTH DEPARTMENT

9495 NC 305 HIGHWAY
POST OFFICE BOX 635
JACKSON, NORTH CAROLINA 27845



DECISION PAPER

TO: Northampton County Board of County Commissioners

FROM: Northampton County Health Department

MEETING DATE: September 7, 2016

RE: Northampton County Health Department New Rates

PURPOSE:

The purpose of this decision paper is to request the Board of Commissioners' approval of the proposed clinic rates to be effective August 15, 2016.

FACTS:

1. Local health departments are entitled to reimbursement rates based upon a cost report that reflects results conducive to the regulations set forth by the Division of Medical Assistance (DMA).
2. The Billing Rate Committee researches and individually analyzes rates currently used by the Health Department and compares them to the most current statewide averages, Medicaid rates and Health Department costs. New rates are proposed where needed.
3. Updated CPT codes and prices prompted the Billing Rate Committee to review the current list of rates for Northampton County Health Department.
4. The proposed rates were submitted to and adopted by the Board of Health at their July 14, 2016 meeting.
5. The new proposed rates will be effective August 15, 2016 upon approval.

DISCUSSION:

Local health departments that bill services through a Medicaid clearinghouse are entitled to reimbursement rates based upon a cost report that reflects outcomes conducive to the regulations set forth by the Division of Medical Assistance (DMA). The Billing Rate Committee researches and analyzes health department current rates and compares them to the most current statewide averages, Medicaid Rates and Health Department costs. A service type needed to be added to the fee schedule while another service type needed to be removed from the schedule. There was also a CPT code that had been updated by the State. The Billing Rate Committee met to discuss these changes. After review and using a cost versus charge approach, the rates were changed for three vaccines. In addition to the aforementioned changes. The proposed rates were adopted by the Board of Health at their July 14, 2016 meeting. The new proposed rates will be effective August 15, 2016 upon approval by the Board of Commissioners.

RECOMMENDATIONS:

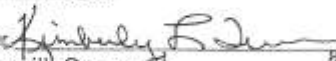
Recommend that the Northampton County Board of Commissioners approve the proposed clinic rates to be effective August 15, 2016.

Respectfully submitted,

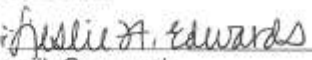

John L. White,
Acting Health Director

COORDINATION:

County Manager:

Concur 
Concur with Comment _____ Blittle
Non-concur _____

Finance Director :

Concur 
Concur with Comment _____
Non-concur _____

NORTHAMPTON COUNTY HEALTH DEPARTMENT FEES

CPT Code	Service Type	CURRENT MEDICAID RATE	NORTHAMPTON 2016 RATE	NEW 2017 RATE
36415	VENIPUNCTURE, FOR LHD USE	2.78	15.00	
36416	COLLECTION OF CAPILLARY SPECIMEN	NR	15.00	
54050	DESTRUCTION OF PENIAL LESION	79.22		90.00
56420	DRAINAGE OF GLAND ABSCESS	96.44	155.00	
57061	TREATMENT OF GENITAL WARTS	87.27	90.00	
57170	FITTING OF DIAPHRAGM / CAP	53.91	102.00	
59025	FETAL NON-STRESS TEST	36.22	125.00	
59425	ANTEPARTUM CARE ONLY (4-6 visits)	340.20	410.00	
59426	ANTEPARTUM CARE ONLY (7 or more visits)	680.62	735.00	
59430	POSTPARTUM CARE ONLY, SEPARATE PROCEDURE	99.08	140.00	
69210	REMOVE IMPACTED EAR WAX	37.03	53.00	
81002	URINALYSIS, NONAUTO	3.25	12.00	
81025	URINE PREGNANCY TEST	8.04	15.00	
82270	FECAL OCCULT BLOOD	4.13	13.00	
82947	ASSAY OF GLUCOSE, QUANT	4.99	16.00	
82950	GLUCOSE TEST (POST-DOSE GCT)	6.04	20.00	
82951	GLUCOSE TOLERANCE TEST (GTT) (3hr)	16.37	55.00	
82952	GTT - (more than 3 specimens)	4.99	16.00	
85018	HEMOGLOBIN	3.01	10.00	
86580	TB SKIN TEST	5.59	25.00	
87081	CULTURE SCREEN	7.33	30.00	
87205	SMEAR, STAIN & INTERPRET (GC)	5.42	21.00	
87210	SMEAR & INTERPRET (WET PREP)	4.85	20.00	
90375	RABIES IG, IM/SC	65.38	89.00	
90471	IMMUNIZATION ADMIN	13.71	13.00	
90471	IMMUNIZATION ADMIN	13.71	13.00	
90472	EACH ADDITIONAL VACCINE (Single or Comb. Vaccine)	13.71	13.00	
90472	EACH ADDITIONAL VACCINE (Single or Comb. Vaccine)	13.71	13.00	
90473	IMM. ADM. BY INTRANASAL	13.71	13.00	
90474	IMM. ADM. BY INTRANASAL	13.71	13.00	
90620	MENINGOCOCCAL GROUP B VACCINE (BEXSERO)	173.48	180.00	
90621	MENINGOCOCCAL GROUP B VACCINE (TRUMENBA)	124.88	130.00	
90632	HEPATITIS A VACCINE - ADULT IM	44.16	80.00	
90633	HEP A VACCINE, PEDIADOL, IM	NR	34.00	
90636	TWINRIX (HepA, HepB)	89.50	110.00	
90648	HIB	21.00	25.00	
90649	HPV	136.73	156.00	
90651 UD	HPV (Gardasil 9)	177.84	190.00	
90655	INFLUENZA - PRESERVATIVE FREE (age 6-36 mos.)	NR	25.00	35.00
90656	INFLUENZA - PRESERVATIVE FREE (3 yrs & older)	16.75	25.00	35.00
90673	FLU VACCINE, 3 YRS, IM	12.74	25.00	35.00
90660	FLU VACCINE, INTRANASAL (FLUMIST)	21.24	25.00	
90670	PNEUMOCOCCAL VACCINE, PCV 13	NR	40.00	
90675	RABIES VACCINE, IM	147.06	275.00	
90681	RotaTeq (2 dose series)	NR	85.00	
90696	KinRIX	NR	40.00	
90698	PENTACEL	NR	75.00	
90700	DTAP	NR	25.00	
90702	DT	NR	30.00	
90707	MMR	41.02	80.00	
90710	MMRV VACCINE	NR	160.00	
90713	IPV	24.79	30.00	
90714	TD - PRESERVATIVE FREE	19.25	20.00	
90715	TDAP	39.49	40.00	
90716	VARICELLA	86.42	90.00	
90723	PEDIARIX (DTaP, HepB, Hib)	72.63	75.00	
90732	PNEUMOCOCCAL VACCINE	31.53	90.00	
90734	MENINGOCOCCAL CONJUGATE VACCINE for IM USE	106.87	107.00	
90744	HEP B VACCINE, PEDIADOL, IM	NR	30.00	
90746	HEP B VACCINE, ADULT, IM	55.20	70.00	
92551	AUDIOMETRY	8.27	30.00	
92567	TYMPANOMETRY	14.06	25.00	
92587	HEARING WITH OAE	30.06	105.00	
96110	DEVELOPMENTAL TEST, LIM	8.75	30.00	
96372	INJECTION FOR DEPO	17.04	20.00	
99173	VISION SCREENING	NR	10.00	

NORTHAMPTON COUNTY HEALTH DEPARTMENT FEES

99201	OFFICE/OUTPATIENT VISIT, NEW	62.10	110.00
99202	OFFICE/OUTPATIENT VISIT, NEW	93.15	180.00
99203	OFFICE/OUTPATIENT VISIT, NEW	132.48	210.00
99204	OFFICE/OUTPATIENT VISIT, NEW	194.58	300.00
99205	OFFICE/OUTPATIENT VISIT, NEW	244.26	400.00
99211	OFFICE/OUTPATIENT VISIT, EST	34.16	60.00
99212	OFFICE/OUTPATIENT VISIT, EST	56.93	105.00
99213	OFFICE/OUTPATIENT VISIT, EST	78.66	175.00
99214	OFFICE/OUTPATIENT VISIT, EST	122.13	250.00
99215	OFFICE/OUTPATIENT VISIT, EST	182.16	360.00
99381	PREV VISIT, NEW, AGE UNDER 1 YEAR	90.00	250.00
99382	PREV VISIT, NEW, AGE 1-4	90.00	275.00
99383	PREV VISIT, NEW, AGE 5-11	90.00	275.00
99383	PREV VISIT, NEW, AGE 5-11	154.00	275.00
99384	PREV VISIT, NEW, AGE 12-17	90.00	365.00
99384	PREV VISIT, NEW, AGE 12-17	169.00	300.00
99385	PREV VISIT, NEW, AGE 18-39	90.00	365.00
99385	PREV VISIT, NEW, AGE 18-39	167.00	300.00
99386	PREV VISIT, NEW, AGE 40-64	199.00	350.00
99391	PREV VISIT, EST, AGE UNDER 1 YEAR	90.00	215.00
99392	PREV VISIT, EST, AGE 1-4	90.00	240.00
99393	PREV VISIT, EST, AGE 5-11	90.00	240.00
99393	PREV VISIT, EST, AGE 5-11	126.00	240.00
99394	PREV VISIT, EST, AGE 12-17	90.00	326.00
99394	PREV VISIT, EST, AGE 12-17	146.00	275.00
99395	PREV VISIT, EST, AGE 18-39	90.00	326.00
99395	PREV VISIT, EST, AGE 18-39	142.00	275.00
99396	PREV VISIT, EST, AGE 40-64	158.00	290.00
99420	ADM./INTERPRETATION OF HEALTH RISK ASSESSMENT	8.14	25.00
99501	HOME VISITS FOR POSTNATAL ASSESS	58.29	330.00
99502	HOME VISITS FOR NEWBORN CARE	60.00	330.00
D0145	ORAL EVAL. PATIENT < 3 YRS & COUNSELING	36.35	75.00
D1206	TOPICAL APPLICATION OF FLUORIDE	16.04	60.00
J1050FP	DEPO-PROVERA CONTRA INJECTION	39.04	45.00
J2790	RH IG, FULL-DOSE, IM	86.49	107.00
S0280	INITIAL RISK ASSESSMENT - Pregnancy Medical Home	50.00	120.00
S0281	POSTPARTUM CLINIC VISITS - Pregnancy Medical Home	150.00	213.00
T1001	HIGH RISK SKILLED HOME VISIT	87.09	125.00
T1002	RN SERVICES, UP TO 15 MINUTES (STD/TB)	18.59	100.00
LOCAL USE CODES - SET RATES			
LU018	COPY OF MEDICAL RECORD (NON-MEDICAL PROVIDER)	NR	15.00
LU024	Determination of Presumptive eligibility	NR	0.00
LU102	COMPLETION OF RECORD for TB SCREENING DIHS 3405	NR	10.00
LU104	PPD Reading Only	*NR	5.00
LU282	STD ERRN Contact (REPORT ONLY)	NR	0.00
LU283	CH ERRN Contact (REPORT ONLY)	NR	0.00
LU600	Maternal Health Visit County	NR	0.00
	CPR Training for Non-County Employees	NR	50.00
CONTRACT RATES:			
Note: Tamara Green will initiate notice of set rates and contract rate changes after approval by the Board of Health and Board of County Commissioners.			
	LIMITED PHYSICAL: EMPLOYEE - CDL	NR	200.00
MATERNITY WOMEN'S HEALTH SERVICES -- \$75/HR			
**The highlighted CPT Code/Service Type is new or the rate has changed. If there is no 2015 rate, vaccine or service was previously unavailable.			



NORTHAMPTON COUNTY HEALTH DEPARTMENT
9495 NC 305 HIGHWAY
POST OFFICE BOX 635
JACKSON, NORTH CAROLINA 27845



DECISION PAPER

TO: Northampton County Board of County Commissioners
FROM: Northampton County Health Department
MEETING DATE: September 19, 2016
RE: Timothy S. Allen, MPT for Physical Therapy Services

PURPOSE:

The purpose of this decision paper is to request approval from the Board of Commissioners for the agreement between Northampton County Health Department's Home Health Agency and Valley Rehab Services, Inc. for the purpose of providing physical therapy services to home health patients.

FACTS:

1. Timothy S. Allen, MPT will provide much needed assistance to the patients in Roanoke Rapids and the Warren County areas.
2. The current physical therapist covering the western end of Northampton County is unable to travel to the patients in these areas.
3. Northampton County's Home Health Agency has worked with Mr. Allen in the past through another agency.
4. The following rates have been proposed due to the competitive rates offered by surrounding agencies.

Service	Proposed Rate
LPT Visit	\$60.00
LPTA Visit	\$60.00
Initial OASIS	\$115.00 (electronic record)
	\$105.00 (paper record)
OASIS Discharge	\$105.00 (electronic record)
	\$80.00 (paper record)

5. An electronic copy of the contract was emailed to county attorney Mr. Scott McKellar, to go through the contract process, on August 11, 2016.
6. The agreement was presented to and approved by the Board of Health at their August 11, 2016 meeting.

DISCUSSION:

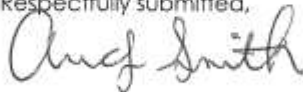
Northampton County Health Department's Home Health Agency has had numerous requests for services from the Roanoke Rapids and Warren County areas. The current

therapist servicing the western end of Northampton County is not able to travel to these patients. Timothy Allen has worked with the Agency in the past and is able to serve the patients in the requested locations. The proposed service rates are competitive and allows the Home Health Agency to provide a reasonable compensation for the physical therapy services rendered by Timothy Allen. The Board of Health approved this contract at their meeting held on August 11, 2016. The contract was submitted to Mr. Scott McKellar, county attorney, on August 11, 2016 to go through the contract process.

RECOMMENDATIONS:

The Northampton County Health Department recommends that the Commissioners approve the proposed contract between Northampton County Health Department's Home Health Agency and Valley Rehab Services, Inc. for physical therapy services as presented above.

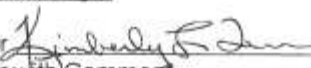
Respectfully submitted,



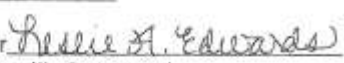
Andy Smith
Health Director

COORDINATION:

County Manager:

Concur 
Concur with Comment _____ 9/12/16
Non-concur _____

Finance Director:

Concur 
Concur with Comment _____
Non-concur _____

**AGREEMENT BETWEEN
NORTHAMPTON COUNTY HOME HEALTH AGENCY
AND
TIMOTHY S. ALLEN, MPT**

THIS AGREEMENT is made and entered into this 1st day of September 2016, by and between Northampton County, North Carolina, by and through the Northampton County Home Health Agency (hereinafter referred to as "Agency") and Timothy S. Allen, MPT, (hereinafter referred to as "Provider").

WITNESSETH

WHEREAS, the Agency is a Medicare-certified home health agency and a North Carolina licensed Home Care Agency, and

WHEREAS, the Agency has a need for additional qualified personnel to care for its patients; and

WHEREAS, the Provider has employees duly licensed and registered to provide these services to the Agency's patients,

NOW, THEREFORE, in consideration of these premises, promises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows.

I. Provider's Responsibilities. The Provider agrees to provide qualified physical therapists and physical therapy assistants to provide the following services to the Agency on an as-needed basis: direct patient care; initial assessments and reassessments of patients, patient evaluation, patient care planning and patient teaching. Provider and its servants, agents and employees shall:

- A. Provide physical therapy to the Agency's patients as requested and assigned by the Agency.
- B. Provide all services in accordance with a plan of care established by the provider within one week of the referral with a copy given to the agency and approved by the patient's attending physician. Provider shall review and revise the plan of care as the patient's condition changes, but shall not alter a patient plan of care without prior approval of the patient's attending physician and shall notify the Agency of any changes. The length of service offered by the Provider will be controlled by the physician's plan of treatment, which is updated every 60 days.
- C. Coordinate patient care, evaluate patient progress and provide discharge planning for those patients under its care, and provide appropriate documentation of such activities.
- D. Assessments and reassessments will be completed according to CMS regulatory requirements. The Provider will be liable for damages incurred as a result of missed assessments.
- E. Provide all services in accordance with all: Agency policies and procedures; state and federal laws, rules and regulations; and currently approved methods, standards of practice and codes of ethics in the medical community. Provider shall require his visiting staff to complete the Agency's orientation program.
- F. Provide services to Agency's as approved by the Agency. Every Monday, Provider shall submit a weekly schedule to the Agency indicating when patients are to receive

services. Provider will notify the Agency and patients of any changes in the schedule.

- G. Maintain clinical records and reports, which constitute the Agency's medical records, including notes and personal observations of the patient's progress and notification of planned visits. All clinical and progress notes shall be completed and submitted within five working days as required by the Agency's policies and procedures. The Provider will comply with standards for documentation including objectively measurable assessments.
- H. Maintain the confidentiality of all medical records and information in accordance with state and federal laws, rules and regulations, and Agency policies.
- I. Maintain on file and make available to Agency upon request, verification of the qualifications of his personnel, including the following:
 - 1. Current resume.
 - 2. Valid North Carolina professional license and copies of annual renewal.
 - 3. Results of initial and annual TB screening. If the individual has a positive TB test, there must be annual documentation from a physician that he/she is free of communicable disease.
 - 4. Evidence of Hepatitis B vaccine or appropriate signed release form.
 - 5. Documentation of competency testing and critical skills verification at hire and annually thereafter.
 - 6. Documentation of initial and annual OSHA Bloodborne Pathogens/Safety training, or verification that the individual received such training prior to providing services.
 - 7. Verification and results of criminal background check.
 - 8. Valid NC drivers' license and proof of car insurance.
 - 9. Documentation of CPR certification.
 - 10. Documentation of a minimum of 12 hours of employment related in-service/continuing education per year.
- J. Require appropriate personnel to attend and participate in such multi-disciplinary meetings and conferences with patients, patients' families and Agency personnel in planning the implementation of the patient's plan of care as may from time to time be requested by Agency.
- K. Provide services without regard to patients' race, religion, sex, age, national origin or disability.
- L. Maintain responsibility for FICA, state and federal taxes, workers compensation and unemployment compensation insurance for all of Provider's staff.
- M. Provide services for the Agency in the following counties: **Licensed Physical Therapist and physical therapy assistants**— Northampton County and possibly in the other service areas which include Halifax and Warren County if agreed upon by the provider.
- N. The provider and agency will communicate on a regular basis, (at least weekly), and patient communications will be documented. The provider will be notified of referrals via telephone, encrypted e-mail, and/or fax.

2. **Agency's Responsibilities.** The Agency shall:
 - A. Retain full responsibility for acceptance of new patients and assignment of patients to Provider.
 - B. Review and monitor all Services for care coordination, supervision and evaluation in accordance with its clinical record review and quality assessment and improvement procedures. Agency shall have the overall responsibility for maintaining the quality of their services provided to patients and insure that the Provider upholds his responsibilities under this Agreement.
 - C. Retain ownership of all records and other documents relating to those patients for whom Provider renders the Services, and Provider acknowledges he has no rights to claims or an ownership interest in such records.
 - D. Incorporate the Provider's clinical and progress notes into the patient's medical record maintained by the Agency and give the Provider access as needed to medical records for patients for whom Provider renders services.
 - E. Orient the Provider's staff to the Agency's policies, procedures, operations and OSHA/infection control procedures, and inform the Provider of any changes in the Agency's policies and procedures.
3. **Compensation.** Agency shall pay Provider, as sole and exclusive compensation for all Services provided pursuant to this Agreement, the sum of \$60.00 per visit for licensed physical therapy and licensed physical therapy assistant visits, which includes travel time, patient care, and documentation. For an initial OASIS comprehensive assessment and a reassessment performed by the physical therapist, the Agency shall pay Provider, as sole and exclusive compensation for all services the following sums: electronic records: \$115.00, paper records: \$105.00; OASIS discharge electronic records: \$105.00, paper discharge records: \$80.00.
4. **Term and Termination.** The term of this Agreement shall be one year, beginning September 1, 2016 and ending on August 31, 2017. This Agreement may be renewed for additional periods upon consent of both parties, which consent shall be memorialized in writing and executed by both parties. Notwithstanding the above, either party may, in its sole discretion, with or without cause, terminate the Agreement at any time upon thirty (30) days written notice to the other party. In addition, Agency may terminate this Agreement at any time upon the occurrence of any of the following events:
 - A. Provider fails to maintain the qualifications specified by this Agreement, or
 - B. Provider fails to maintain professional liability insurance as required by this Agreement, or
 - C. Upon the bankruptcy, insolvency or dissolution of the Provider, or
 - D. Provider breaches any other term or condition of this Agreement and fails to cure such breach within ten (10) days of receipt or written notice of the breach.
5. **Relationship of Parties.**
 - A. Provider acknowledges recognizes and defines himself as being an independent contractor of the Agency and not an employee or agent thereof, and shall at no time hold himself out as an employee or agent of the Agency.
 - B. Neither party shall solicit any person for employment or services or discuss with any person potential employment or provision of services while such person is an employee on active status with the other party without the express written permission of the employing party. In addition, neither party shall employ or contract for

services with any former employee of the other party without the party's express written permission until a period of two (2) years has lapsed from such former employee's last date of employment in active status.

6. Indemnification and Insurance.

- A. Indemnification. To the extent allowed by law, Agency and Provider shall indemnify and hold harmless one another from and against any and all claims, liabilities, damages, fines, penalties, taxes, costs and expenses, including reasonable attorneys' fees and costs of settlement, which either party may suffer, sustain or become subject to as a result of any act or omission of the other party or the other party's officers, employees, agents or servants in performing its duties hereunder.
- B. Insurance. Provider shall procure and maintain insurance of not less than one million dollars (\$1,000,000) per claim and three million dollars (\$3,000,000) aggregate for professional liability, and shall maintain comprehensive general liability and such other insurance as shall be necessary to insure Provider and Provider's employees against damages arising from the duties and obligations of this Agreement. Copies of certificates of insurance shall be available upon request.

7. Access to Books and Records. Provider agrees as follows: Until the expiration of four (4) years after the furnishing of any Service pursuant to this Agreement, Provider shall, upon written request, make available to the Secretary of HHS, the Secretary's duly authorized representative, the Comptroller General, or the Comptroller General's duly authorized representative, this Agreement and such books, documents, and records as may be necessary to certify the nature and extent of the cost or value of services to be performed by Provider thereunder, including but not limited to the records and reports required to be maintained by the Provider.

8. Compliance with Laws

- A. It is understood and agreed upon between the parties that the compensation under this Agreement is consistent with fair market value in arms-length transactions. It is not determined in a manner that takes into account the volume or value of any referrals or business generated or to be generated between the parties, under this Agreement or any other agreement between the parties, for which payment may be made in whole or in part under the Medicare or Medicaid program.
- B. Nothing contained in this Agreement shall require either party or any physician or hospital to admit or refer any patients to the other party or otherwise to use any health care facility or service as a precondition to receiving the benefits set forth herein. It is agreed and recognized that patients have the freedom to choose their health care provider and all patients will be afforded that opportunity.
- C. It is the intent of the parties to conduct their relationship in full compliance with the applicable federal and state laws prohibiting payments for referrals (hereinafter referred to as the "Anti-Referral Laws"). The parties agree that neither will intentionally conduct itself under this agreement in a manner that poses a bona fide risk of violation of the Anti-Referral Laws. If legislation is passed that would hinder either party's ability to obtain reimbursement from Medicare or Medicaid due to any provision of this Agreement, or would prohibit the payment of the compensation under this Agreement, then the parties shall negotiate in good faith to amend this Agreement to attempt to avoid such prohibition in a manner that complies with all applicable laws and regulations.

9. Miscellaneous

- A. Notices. All notices, payments and any other communications required to be in writing shall be given either in person or by registered or certified mail, return receipt requested, U.S. postage prepared, addressed as follows:

Agency Name and Address	Provider Name and Address
Northampton Co Home Health Agency PO Box 635 Jackson, NC 27845	Timothy S. Allen, MPT 600 Franklin Street Roanoke Rapids, NC 27870

- B. Governing Law. This Agreement shall be governed and construed under the laws of the State of North Carolina to interpretation, construction and performance.
- C. Waiver. The waiver by either party of a breach of any provision of this Agreement shall not operate as a waiver of any subsequent breach thereof.
- D. Assignment. The rights and obligations of the Provider under this Agreement, as an independent contractor, relate to specialized personnel services rendered by the Provider and may not be assigned by the Provider without the prior written approval of the Agency. Agency may, in its sole discretion, assign its rights and obligations under this Agreement to any parent, subsidiary, affiliate, or successor entity.
- E. Amendments. This Agreement may be amended only by written amendment executed by both parties.
- F. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- G. Headings. The headings in this Agreement are for reference purposes only and shall not affect the meaning of this Agreement.
- H. Entire Agreement. This Agreement constitutes the entire understanding between the parties and supersedes all prior agreements, either oral or in writing, with respect to the subject matter hereof.
- I. Severability. If any provision of this Agreement or the application thereof is held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.
- J. HIPPA Compliance: In addition to and without limitation of the foregoing, if and to the extent, and for as long as required by the provisions of 45 CFR Part 160 and Part 164 enacted by the Health Insurance Portability and Accountability Act of 1996 (HIPPA) effective April 14, 2003, and as amended from time to time, each health plan, health care clearinghouse and/or health care provider shall appropriately safeguard, in accordance with the HIPPA regulations, all Protected Health Information made available to it by, or obtained by it from another party.
- K. E-Verify Compliance: Employers and their subcontractors with twenty-five (25) or more employees in the State of North Carolina as defined in Article 2 of Chapter 64 of the North Carolina General Statutes must comply with E-Verify requirements in order to contract with governmental units. E-Verify is a program operated by the United States Department of Homeland Security and other federal agencies, or any

successor or equivalent program used to verify the work authorization of newly hired employees. Provider certifies that he is aware of and in compliance with the requirements of E-Verify and Article 2 of Chapter 64 of the North Carolina General Statutes. In addition, Provider certifies that to the best of his knowledge, any subcontractors employed by him as a part of this agreement are in compliance with the requirements of E-Verify and Article 2 of Chapter 64 of the North Carolina General Statutes. Provider acknowledges and agrees that local governments are prohibited from contracting with persons or entities that do not comply with E-Verify requirements and that Agency and the County of Northampton, North Carolina are relying on the certifications set forth herein in order to contract with Provider.

IN WITNESS WHEREOF, the parties have caused their duly authorized officials to execute this Agreement on the date indicated above.

AGENCY

PROVIDER

Northampton County Home Health Agency Timothy S. Allen, MPT

By: _____ By: _____

Date: _____ Date: _____

THIS instrument has been pre-audited in the manner required by the local Government Budget and Fiscal Control Act.

Destin A. Edwards 9-08-10
Northampton County Finance Officer Date

Manager, Northampton County Date

Chair, Northampton County Board of Commissioners Date

Chair, Northampton County Board of Health Date

Business Associate Agreement

This Agreement is made effective the 1st day of September 2016, by and between Northampton County, North Carolina, by and through the Northampton County Home Health Agency, hereinafter referred to as "Covered Entity",¹ and Timothy S. Allen, MPT hereinafter referred to as "Business Associate", (individually, a "Party" and collectively, the "Parties").

WITNESSETH:

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, known as "the Administrative Simplification provisions," direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information, and the "Health Information Technology for Economic and Clinical Health" ("HITECH") Act (Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5)) modified and amended the Administrative Simplification provisions; and

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services issued regulations modifying 45 CFR Parts 160 and 164 (the "HIPAA Rules"), as further amended by the Omnibus Final Rule (78 Fed. Reg. 5566), (hereinafter, the Administrative Simplification provisions, HITECH, such rules, amendments, and modifications, including any that are subsequently adopted, will be collectively referred to as "HIPAA"); and

WHEREAS, the Parties wish to enter into or have entered into an arrangement whereby Business Associate will provide certain services and/or products to Covered Entity, and, pursuant to such arrangement, Business Associate may be considered a "business associate" of Covered Entity as defined by HIPAA (the agreement evidencing such arrangement is titled Agreement between Northampton County, North Carolina, by and through the Northampton County Home Health Agency and Valley Rehab Services, Inc. dated September 1, 2016, and is hereby referred to as the "Arrangement Agreement"); and

WHEREAS, Business Associate may have access to Protected Health Information in fulfilling its responsibilities under such arrangement;

THEREFORE, in consideration² of the Parties' continuing obligations under the Arrangement Agreement, compliance with HIPAA, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree to the provisions of this Agreement in order to address the requirements of HIPAA and to protect the interests of both Parties.

I. DEFINITIONS

Copyright©2013 North Carolina Healthcare Information and Communications Alliance, Inc. (NCHICA), no claim to original U.S. Government Works. Any use of this document by any person is expressly subject to the user's acceptance of the terms of the User Agreement and Disclaimer that applies to this document, which may be found at www.nchica.org/HIPAAResources/Disclaimer.htm and which is available from NCHICA upon request.

Except as otherwise defined herein, any and all capitalized terms in this Section shall have the definitions set forth by HIPAA. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of HIPAA, HIPAA shall control. Where provisions of this Agreement are different from those mandated by HIPAA, but are nonetheless permitted by HIPAA, the provisions of this Agreement shall control.

II. BUSINESS ASSOCIATE OBLIGATIONS

Business Associate acknowledges and agrees that all Protected Health Information that is created, maintained, transmitted or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate, or Protected Health Information which, on behalf of Covered Entity, is created, maintained, transmitted or received by Business Associate or a Subcontractor, shall be subject to this Agreement.

- (a) Business Associate agrees:
 - (i) he is aware of and will comply with all provisions of HIPAA that are directly applicable to business associates;
 - (ii) in the event he enters into an agreement with a Subcontractor under which Protected Health Information could or would be disclosed or made available to the Subcontractor, the Business Associate will have in place an appropriate Business Associate Agreement with the Subcontractor before any Protected Health Information is disclosed or made available to the Subcontractor;
 - (iii) to use or disclose any Protected Health Information solely as would be permitted by HIPAA if such use or disclosure were made by Covered Entity: (1) for meeting its obligations as set forth in the Arrangement Agreement, or any other agreements between the Parties evidencing their business relationshipⁱⁱ, or (2) as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Covered Entity is required to disclose such information or as otherwise permitted under this Agreement, the Arrangement Agreement (if consistent with this Agreement and HIPAA), or HIPAA.^{iv} All such uses and disclosures shall be subject to the limits set forth in 45 CFR § 164.514 regarding limited data sets and 45 CFR § 164.502(b) regarding the minimum necessary requirements;
 - (iv) at the request of the Secretary, to comply with any investigations and compliance reviews, permit access to information, provide records and compliance reports, and cooperate with any complaints, pursuant to 45 CFR § 160.310;
 - (v) at termination of this Agreement, the Arrangement Agreement (or any similar documentation of the business relationship of the Parties), or upon request of Covered Entity, whichever occurs first^v, if feasible, Business Associate will return or destroy (and attest to the destruction of) all Protected Health Information received from Covered Entity or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of such information, or if such return or destruction is not feasible, Business Associate will extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible;
 - (vi) to ensure that his Subcontractors to whom he provides Protected Health Information received from Covered Entity or created or received by Business Associate on behalf of Covered Entity, agree to the same (or greater) restrictions and conditions that apply to Business Associate with respect to such information, and agrees to, pursuant to 45 CFR § 164.314, implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected

health information that he creates, receives, maintains, or transmits on behalf of the Covered Entity and ensure that any Subcontractors to whom he provides such information agrees to implement reasonable and appropriate safeguards to protect it. In addition, Business Associate agrees to take reasonable steps to ensure that his employees' actions or omissions do not cause Business Associate to breach the terms of this Agreement;

(vii) Business Associate shall, following the discovery of a breach of unsecured Protected Health Information, as defined in HIPAA, notify Covered Entity of such breach pursuant to the terms of 45 CFR § 164.410 and cooperate in Covered Entity's breach analysis procedures, including risk assessment, if requested. A breach shall be treated as discovered by Business Associate as of the first day on which such breach is known to Business Associate or, by exercising reasonable diligence, would have been known to Business Associate. Business Associate will provide such notification to Covered Entity without unreasonable delay and in no event later than 10 calendar days after discovery of the breach. Such notification will contain the elements required in 45 CFR § 164.410.^{vii} Covered Entity shall determine any required actions with respect to any such breach, and Business Associate shall cooperate with Covered Entity and comply with such actions; The Business Associate expressly agrees to indemnify, defend, and hold harmless Northhampton County Health Department against any and all claims, actions, demands, costs, damages, loss or expense of any kind whatsoever resulting solely from the negligence or intentional wrongdoing of the Business Associate, his agents and/or employees, including but not limited to court costs and attorney fees incurred by the Covered Entity in connection with the defense of said matters; and

(viii) Business Associate will not directly or indirectly receive remuneration in exchange for any Protected Health Information without a valid authorization from the applicable individual except in compliance with 45 CFR § 164.502(a)(5)(ii). Without written approval of Covered Entity, Business Associate will not engage in any communication which might be deemed to be "marketing" under HIPAA. In addition, Business Associate will, pursuant to HIPAA, comply with all applicable requirements of 45 CFR §§ 164.308, 164.310, 164.312 and 164.316.

(b) Notwithstanding the prohibitions set forth in this Agreement, Business Associate may use and disclose Protected Health Information as follows^{viii}:

(i) if necessary, for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that as to any such disclosure, the following requirements are met:

(A) the disclosure is required by law; or

(B) Business Associate obtains satisfactory assurances through a written Business Associate Agreement from the Subcontractor to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the Subcontractor, and the Subcontractor notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

(ii) for data aggregation services, if to be provided by Business Associate for the health care operations of Covered Entity pursuant to any agreements between the Parties evidencing their business relationship. For purposes of this Agreement, data aggregation services means the combining of Protected Health Information by Business Associate with the Protected Health Information received by Business Associate in his capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities^{viii}.

(c) Business Associate will implement appropriate safeguards to prevent use or disclosure of Protected Health Information other than as permitted in this Agreement^{ix}. Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any Electronic Protected Health Information that he creates, receives, maintains, or transmits on behalf of Covered Entity as required by HIPAA.

(d) The Secretary of Health and Human Services shall have the right to audit Business Associate's records and practices related to the use and disclosure of Protected Health Information to ensure Covered Entity's and Business Associate's compliance with the terms of HIPAA.

(e) Business Associate shall report to Covered Entity any use or disclosure of Protected Health Information which is not in compliance with the terms of this Agreement of which he becomes aware. Business Associate shall report to Covered Entity any Security Incident of which he becomes aware promptly and in the manner required by Covered Entity to permit compliance with the requirements of HIPAA.^x In addition, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

III. AVAILABILITY OF PHI

Business Associate agrees to comply with any requests for restrictions on certain disclosures of Protected Health Information pursuant to 45 CFR § 164.522 to which Covered Entity has agreed and of which Business Associate is notified by Covered Entity^{xi}. Business Associate agrees to make available Protected Health Information to the extent and in the manner required by 45 CFR § 164.524^{xi}. If Business Associate maintains Protected Health Information electronically, he agrees to make such Protected Health Information electronically available to the applicable individual. Business Associate agrees to make Protected Health Information available for amendment and incorporate any amendments to Protected Health Information in accordance with the requirements of 45 CFR § 164.526. In addition, Business Associate agrees to make Protected Health Information available for purposes of accounting of disclosures, as required by 45 CFR § 164.528. Business Associate and Covered Entity shall cooperate in providing any accounting required on a timely basis.

IV. TERMINATION

Notwithstanding anything in this Agreement to the contrary, Covered Entity shall have the right to terminate this Agreement and the Arrangement Agreement immediately if Covered Entity determines that Business Associate has violated any material term of this Agreement. If Covered Entity reasonably believes that Business Associate will violate a material term of this Agreement, where practicable, Covered Entity shall give written notice to Business Associate of such belief within a reasonable time after forming such belief. If Business Associate fails to provide adequate written assurances to Covered Entity that he will not breach the cited term of this Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach is to occur, then Covered Entity shall have the right to terminate this Agreement and the Arrangement Agreement immediately.^{xii}

V. MISCELLANEOUS

Except as expressly stated herein or in HIPAA, the Parties to this Agreement do not intend to create any rights in any third parties. The obligations of Business Associate under this Section shall survive the expiration, termination, or cancellation of this Agreement, the Arrangement Agreement and/or the business relationship of the Parties, and shall continue to bind Business Associate, his agents, employees, contractors, successors, and assigns as set forth herein.

This Agreement may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. This Agreement will be governed by the laws of the State of North Carolina^{xv}. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

The Parties agree that, in the event that any documentation of the arrangement pursuant to which Business Associate provides services to Covered Entity contains provisions relating to the use or disclosure of Protected Health Information which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate's use and disclosure of Protected Health Information.^{xv}

In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. In addition, in the event a Party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of HIPAA, such Party shall notify the other Party in writing. For a period of up to thirty days, the Parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty-day period, the Agreement fails to comply with HIPAA, then either Party has the right to terminate upon written notice to the other Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

COVERED ENTITY:

BUSINESS ASSOCIATE:

By: _____

By: _____

Title: _____

Title: _____

Endnotes:

ⁱ If the agreement is being entered into by a Business Associate and a Subcontractor, the designations of "Covered Entity" and "Business Associate" throughout the agreement should be changed to ensure that the parties to the agreement are appropriately identified therein.

ⁱⁱ In many agreements, this paragraph includes as consideration "Ten and 00/100s Dollars (\$10.00 and other good and valuable consideration." While this is fairly standard contract consideration language, since optional, we have chosen not to include it. The user should make a determination about whether the continuation of the relationship with the vendor and the compliance with amended laws is sufficient consideration and, if not, the user may consider adding the \$10.00.

ⁱⁱⁱ Issues were raised regarding how much specificity is required regarding the types of services to be performed and the types of disclosures which would be allowed based upon those services. If the section in which services are described is not specific, a listing of specific services might be stated here in lieu of a reference to the Agreement section. In addition, if there are no other agreements between the parties through which PHI is exchanged, the second portion of this sentence could be removed.

^{iv} The NPRM issued on March 27, 2002 contained model Business Associate Agreement language which includes a requirement that the Covered Entity provide to the Business Associate a copy of its Notice of Privacy Practices and any amendments, as prepared. This requirement was not included in this document because this was not deemed to be required by the rule and was felt to be potentially onerous to the Covered Entity.

^v Although the rule doesn't require that a Business Associate return PHI at the request of a Covered Entity other than at the termination of their agreement, practical considerations suggest that this inclusion may be helpful to the Covered Entity and its compliance. It has also been suggested that in some cases, requiring a Business Associate to return all PHI prior to termination of the Agreement could make it difficult for the Business Associate to continue to perform the Business Associate's obligations under the Agreement.

^{vi} In some instances, it may be appropriate for the Business Associate to handle Breach Notification. In addition, the Covered Entity may wish to require the Business Associate to pay any expenses associated with any breach caused by the Business Associate.

^{vii} Some Covered Entities may wish to allow a Business Associate to de-identify PHI on the Covered Entity's behalf and, if that is intended, the Covered Entity might include a statement to that effect in this Agreement.

^{viii} This section may not apply if this agreement is used between a Business Associate and a Subcontractor since Business Associates would not have "health care operations."

^{ix} Issues were discussed regarding the level of responsibility which the Covered Entity has for the action/inaction of a Business Associate. With respect to safeguards, a Covered Entity may wish to

set forth a list of required safeguards, however, it may be asserted that, by setting the level of safeguards, the Covered Entity may incur additional risk.

* The Covered Entity may wish to provide a specific response time for attempted security incidents versus successful security incidents, and may wish to review the notification requirements contained in the federal Data Use and Reciprocal Support Agreement. In addition, if the Covered Entity wishes to require the Business Associate to pay any expenses related to security incidents caused by the Business Associate, it may wish to include a provision in this Agreement.

^{xi} Covered Entities should note that the HITECH Act modified its requirements for accepting restrictions under 45 CFR § 164.522.

^{xii} Issues were raised regarding whether a Business Associate must provide PHI directly to an individual, or whether access should always be granted only through the Covered Entity. In the event a Business Associate is not required to grant direct access, the suggestion was made that a Covered Entity might wish to require that all access be only through the Covered Entity.

^{xiii} Although the rule does not address injunctions and thus this provision does not refer to injunctions, a Covered Entity may wish to provide that it may seek an injunction for a breach of this Section by a Business Associate.

^{xiv} The Covered Entity may wish to change the applicable state law. In addition, a Covered Entity may wish to evaluate the applicability of other laws to the Business Associate, including state and federal data breach laws and other federal agency requirements such as those issued by the Federal Trade Commission, and include additional language and/or requirements here.

^{xv} A Covered Entity may wish to provide more specific references to sections of existing documentation which are intended to be more restrictive than the terms of this Agreement.



NORTHAMPTON COUNTY HEALTH DEPARTMENT

9495 NC 305 HIGHWAY
POST OFFICE BOX 635
JACKSON, NORTH CAROLINA 27845



DECISION PAPER

TO: Northampton County Board of County Commissioners
FROM: Northampton County Health Department
MEETING DATE: September 19, 2016
RE: Carolinas IT, Inc. (CureMD.com)

PURPOSE:

The purpose of this decision paper is to request the Board of Commissioners approval for an agreement between Northampton County Health Department and Carolinas IT, Inc. (CureMD.com) for the purpose of providing an electronic health records (EHR) system.

FACTS:

1. The Medicaid Electronic Health Records (EHR) Incentive Program will provide incentive payments to eligible professionals as they adopt, implement, upgrade, or demonstrate meaningful use of certified electronic health record technology.
2. Up to \$63,750.00 could be received over a six-year period for participating in the N.C. Medicaid EHR Incentive Program. Participation must begin in program year 2016 to have the opportunity to earn the full incentive payment.
3. This agreement was sent to Scott McKellar, County Attorney, to go through the contract process on May 5, 2016.
4. The agreement was presented to and approved by the Board of Health at their May 12, 2016 meeting.

DISCUSSION:

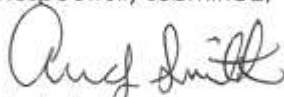
Demonstrating meaningful use of certified EHRs takes time and resources. Eligible professionals can receive financial support from the CMS Medicare and Medicaid EHR Incentive Program. Northampton County Health Department will be eligible to receive up to \$63,750.00 over six years for participating in the N.C. Medicaid Electronic Health Records Incentive Program upon the implementation of the use of electronic health records. This is the last year that the incentive funding will be available. This incentive

money provides funding to purchase and maintain the software. The contract was sent to Scott McKellar, County Attorney, to go through the contract process on May 5, 2016 and was presented to and approved by the Board of Health at their May 12, 2016 meeting.

RECOMMENDATIONS:

Recommend that the Northampton County Board of Commissioners approve the agreement between Northampton County Health Department and Carolinas IT, Inc. (CureMD.com) for the purpose of providing an electronic health records (EHR) system.

Respectfully submitted,



Andy Smith
Health Director

COORDINATION:

County Manager:

Concur Kimberly L. Lee
Concur with Comment _____
Non-concur _____

Finance Director :

Concur Bessie A. Edwards
Concur with Comment _____
Non-concur _____

THIS License and Services Agreement (this "**Agreement**") is made as of the day of your signatures on the CureMD Proposal (the "**Effective Date**"), between CureMD.com, Inc., a New York corporation ("**CureMD**", "**CureBilling**", "**We**"), and Northampton County Health Department ("**Licensee**", "**You**"). **You and CureMD are collectively referred to as the "Parties."**

CureMD EHR is CCHIT 2011 certified in supporting physicians and medical practices and fully meets or exceeds the Meaningful Use Criteria specified in the American Recovery and Reinvestment Act 2009 (ARRA). CureMD EHR includes integrated e-prescribing and supports current interoperability eRx, PQRI incentive and Meaningful Use incentive payments. If CureMD EHR does not get certified or fails to meet the criteria within 3 months of the certification becoming available, CureMD will refund maintenance fees for the time during which it remains uncertified after the expiry of the 3 month period.

In consideration of the rights and benefits that they will each receive in connection with this Agreement, the parties, intending to be legally bound, agree as follows:

1) Definitions: For the purposes of this Agreement, the terms set forth in this section have the meanings assigned to them below. Terms not defined below (whether or not capitalized) have the definitions given them in HIPAA, unless the context requires otherwise

"Accounting Log" means accounting records compiled and maintained by CureMD regarding the usage of the Program by the Licensee, which records may include, for example, a schedule of the times at which a Program was used by the Licensee and /or the amount of time any given Authorized User used the Program or any portion thereof.

"Agreement" means this License Agreement (paper or electronic) or any amendment thereof.

"ASP" or "Application Service Provider" or "Subscription" means the delivery of Applications over the Internet via a standard set of communications protocols as warranted by this Agreement.

"Authorized User" means you and those members of your Workforce who are individually authorized by you and CureMD to have access to CureMD Programs and Services to assist you in providing treatment and obtaining payment for treatment, and to whom we have assigned a unique identifier for access to the CureMD Programs and Services.

"Confidential Information", means any information concerning our business and includes all data, materials, products, technology, computer programs, specifications, manuals, business plans, software, trade secrets, workflows, customers, source code, data models, marketing plans, methods of operation, financial information, and other information disclosed or submitted, orally or in writing, or through the licensed programs and services or by any other media from one party to another pursuant to this Agreement or any other information that is treated or designated by us as confidential or proprietary, or would reasonably be viewed as confidential or as having value to our competitors. Confidential Information shall not include information that we make publicly available or that becomes known to the general public other than as a result of a breach of an obligation by you. Confidential Information does not include individuals' health information.

"CureMD Information" means Reference Information and all documents, communications, emails, training materials, online help, user manuals, reports, analysis and other material prepared, created or transmitted by CureMD to the Licensee.

"CureMD Materials" means all software, Program, Updates and copies of all or portions thereof (including demonstration copies), user Manuals, and other documentation provided by, or on behalf of, CureMD to the Licensee including CureMD programs, subscription, services, and all files, data, and other materials and information provided through or as part of this agreement.

"CureMD Program and Services" means all parts of the solution delivered other than third party and Sub-licensed Programs. However, "Programs and Services" or "Programs", "Software" shall include CureMD Programs and or Services and third party programs and or services. Your indemnification, confidential information and intellectual property obligations hereunder are for CureMD Programs and Services as well as third party programs and services. "Hosted Applications" shall also mean both CureMD and third party programs and services.

"De-identified Information" means information that has been de-identified in accordance with the provisions of the Privacy Rule, and "De-Identify" means make information into De-Identified Information.

"Equipment" means the operating system, hardware, software and networks on or through which the CureMD programs are used or accessed by the Licensee Software Support and Maintenance includes telephone support and product upgrades and content usage for drug database and Drug Interaction checks, ICD and CPT upgrades, e-mail and fax support, patch upgrades and any other auxiliary activities that may be conducted to facilitate the use of the CureMD Software and Services covered under this Agreement.

"HIPAA" means the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder, including the Privacy Rule and the Security Rule.

"New Product" means any software program or other products, subscription or services, other than Programs or Updates which CureMD provides to its customers. CureMD may charge a separate fee for any New Product as specified or determined by CureMD in accordance with the applicable rates.

"Policies and or Procedures" means our rules, regulations, policies and procedures for access to and use of the CureMD Programs and Services including third party programs and services, as changed from time to time and as made available or communicated to You in writing, or posted electronically..

"Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

"Security Rule" means the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR part 160 and part 164, subparts A and C.

"Services" means any and all services that You request and or CureMD deliver.

"Term" means the initial term and all renewal terms of this Agreement.

"Full Time Provider" means any provider that works more than 2 days a week and has a valid National

Provider Identifier (NPI), including but not limited to Physicians, Nurse Practitioners, Physician Assistants, Audiologists, Optometrists, Therapists, Occupational Therapists, Physical Therapists, Music Therapist, Speech Therapists, Massage Therapists, Chiropractors, Anesthesiologists, Psychologists, Dentists, Hygienists, Licensed Social Workers, Midwives, Nutritionists, Dietitians, Counselors, Mental Health Practitioners, Neurophysiologists, care managers, care coordinators and Podiatrists employed by or under contract with Licensee to provide healthcare services. Each Full Time provider may be provided a maximum of five (5) non-provider licenses free of cost. Additional non-provider licenses shall be charged at \$100/user per month.

"Optional Services" means additional services that CureMD may offer to license-holder of CureMD Programs from time to time.

"Part Time Provider" means any provider that works 2 days or less per week. Licensee must have a minimum of one (1) Full Time provider in a practice. If the Provider increases the number of days worked, Licensee will be required to purchase a full time provider license and pay the increase in license fees. Non-provider licenses for Part Time providers shall be charged at \$100/user per month. CureMD may conduct an audit at any time, and if the provider is found to be working more than 2 days per week then the Licensee must purchase the full time license and will incur a 10% penalty on both the license fee, support and maintenance. All fees / penalties will be retroactive. If the practice has Part Time providers only, then the first Part Time provider will be considered as a Full Time Provider.

"Non-Provider License" means a limited license for any personnel employed by or under contract with Licensee who do not have a National Provider Identifier (NPI), including but not limited to office managers, nurses, secretaries, or other administrative staff.

"System" means the Licensee's computer system in which Programs are installed, including allied Equipment, programs, and related optional software, hardware and or auxiliaries.

"Updates" means any changes, enhancements or modifications to a Program, documentation, services, and materials that are provided by CureMD to Licensee. The determination of whether or not to issue a change, enhancement or modification or to designate any change, enhancement or modification as an Update shall be, in each case, made solely by CureMD. Updates do not include new Products, materials, services, documents or major enhancements and or early release versions of any new or existing products and services.

"User" or "End User" means you and any other user of the Programs and Services authorized by you.

"User Manuals", means the documentation, and materials that accompany any Program and are published and distributed by or on behalf of CureMD to the Licensee from time to time.

"Workforce" means employees and agents of Licensee and independent contractors.

"Website" means the website accessible from the URL <http://www.curemd.com> or other CureMD domains.

"Your Health Information" means health information that you or your Workforce or other Users enter into the CureMD Programs.

"Your Site" means the location you provided us upon registration, and such other location or locations as we may approve from time to time.

2) **License:** CureMD grants and Licensee accepts a non-exclusive, non-transferable, limited license for the registered users to access and use the functionality of CureMD Programs and Services during the term, subject to your full compliance with the terms and conditions set forth in this Agreement and with our Policies and Procedures. The Licensee shall not permit any other person or entity to access or use the Programs. The Programs shall be used with Equipment comparable in operation to the recommended operating system, hardware types and network settings and peripherals as recommended by CureMD from time to time.

The Licensee acknowledges and agrees that the Programs and other CureMD Materials are licensed solely for the internal use of Licensee organization in clinical operations and administration in the ordinary course of business in the United States of America. The Licensee may not use the Programs or other CureMD Materials for any other purposes, such as use to provide data processing services to other health care organizations, integrate with other third party solutions or services or embed, include additional services in any circumstances without prior written authorization from CureMD and or cause to exhibit software, programs, documentation or materials. Additionally, You will not: (a) use the CureMD Programs and Services or any portion thereof for time-sharing, rental or service bureau purposes including without limitation use methods, applications, techniques, efforts to develop functionally similar Software and or workflows/design/functionality or permit any third party to do any of the foregoing. You agree to not grant access to any Third party for any purpose whatsoever without the prior written consent of CureMD; (b) make the Programs and Services, in whole or in part, available to any other person, entity or business; (c) sell, sublicense, lease, permit, transfer, copy, reverse engineer, decompile or disassemble the Programs and Services, in whole or in part, or otherwise attempt to discover the source code to the software used in the Programs; or (d) modify, alter, integrate, combine the Programs and Services or associated software with any other software or services not provided or approved by us. You have and will obtain no rights to the Programs and Services except for the limited rights to use the Programs and Services expressly granted by this Agreement.

Except as expressly provided herein, each Sub-licensed Program may be used solely with, or as part of, for the purpose of running the Program(s) and for no other purpose. In addition to the terms and conditions set forth in herein, the use by the Licensee of each Sublicensed Program shall be governed by the additional terms and conditions applicable to such Sub-licensed Program set forth herein. The Programs may only be used by the Licensee in the territory of the United States of America, unless otherwise agreed upon in writing by the mutual consent of the parties to this Agreement.

The Programs and Services include certain third party software and services, which may require that you enter into separate subscription or licensing agreements with third party vendors. You agree to execute such agreements as may be required for the use of such software or services, and to comply with the terms of any license or other agreement held by us, relating to third party products included in the CureMD Programs and Services.

The parties may add to this Agreement the license of New Programs, or Programs for installation on additional file servers by execution of additional Program Reference Schedule and payment by the Licensee of the Subscription fees and other additional subsequent fees as may be agreed upon by both the parties. All such amended or additional schedules shall be executed by the Licensee and delivered to

CureMD, and shall become effective upon acceptance and execution by CureMD upon the payment of initial and additional fees.

3) Hosting and Access Control: Subject to the terms and conditions of this Agreement, if you are signing up for Client Web Server version of the Programs, you will locally host them on your own servers, and will make it available to CureMD via the Internet or physically for regular CureMD Application level support and maintenance and for verifying compliance with CureMD policies and the terms and conditions hereof.

However, if you are signing up for the ASP version of the Programs, CureMD will: (a) make the Hosted Applications and allied services available to Licensee via the Internet on an ASP basis; (b) make the Documentation for the Hosted Applications available to Licensee; and (c) provide to Licensee a URL, user name, password and other information required to use the Application.

Licensee will not on a unilateral basis withhold, deny, delay or interrupt CureMD's access to the hosted Servers and/or application. Licensee shall use the CureMD Applications for lawful purposes and in compliance with applicable laws. Licensee shall be responsible for all uses of CureMD Programs by its Users regardless of whether such use is authorized or not by the Licensee or CureMD.

CureMD Applications are provided for use in conformance with the terms and conditions hereof. If CureMD becomes aware of possible violations, CureMD may initiate an investigation including gathering information from Licensee and examination of material and the data logs.

During the investigation, CureMD in its sole and absolute discretion, may suspend access to CureMD Programs and/or remove the content or other material. If CureMD determines, in its sole discretion, that a violation of this Agreement has occurred, it may take responsive action, including without limitation, permanent removal of the content on CureMD Programs, or any portion thereof, along with issuance of warnings to Licensee and/or suspension/termination of this Agreement and application access.

- a. Licensee shall be solely responsible for: (i) procuring, at its expense, the necessary environment at the Licensee's location(s) to use the Hosted Applications via the Internet or otherwise, including, without limitation, all computer hardware, software and equipment, Internet access and telecommunications services (collectively, the "Licensee Systems"); (ii) complying with all laws, rules and regulations related to the Licensee's use of its Systems and the licensed Programs and services hereunder; (iii) keeping its user name and password secret and confidential, and, for any communications or transactions that are made, using the same; (iv) changing its user name and password if it believes that the same has been stolen or might otherwise be misused; (v) maintain recommended information security tools, technologies, fire walls, antivirus, spy wares, etc. and other technical and administrative precautions to preserve and protect the protected health information (PHI); (vi) obligations under any third party agreements to which Licensee is a party, including, without limitation, any agreement pursuant to which Licensee procures the Licensee Systems or any portion thereof, regardless of whether CureMD provides Licensee with any assistance in such procurement; (v) in case Licensee requests the Revenue Cycle Management Services (Medical Billing services, CureBilling), Licensee shall be responsible for provider credentialing, patient billing, customer service, and other responsibilities mentioned in the Revenue Cycle Management exhibit to this Agreement; (vi) acquiring adequate system know-how in order to correctly use Programs and Services and

follow CureMD and its Licensors' verbal and written guidelines, policies, education material or procedures in regard to the use of Programs and Services as well as recommended workflows related thereto.

- b. Permitted Uses: Subject to the terms of this Agreement, we authorize you to access and to use the Programs and Services for treatment and for obtaining payment for treatment, and for other purposes expressly authorized in our Policies and Procedures and or other communication from us in writing; provided that, except as expressly authorized in our Policies and Procedures, (i) you may access only information pertaining to individuals with whom you have a treatment relationship or for whom a provider who has a treatment relationship with has requested a professional consultation from you, or from whom you have received authorization to use their health information; and (ii) you may use only the minimum necessary information for payment purposes. You agree that you will not access or use the Programs and Services for any other purposes. In particular:
- i. You will not reproduce, publish, or distribute content in connection with the programs and services that infringes any third party's trademark, copyright, patent, trade secret, publicity, privacy, or other personal or proprietary right;
 - ii. You will comply with all applicable laws, including laws relating to maintenance of privacy, security, and confidentiality of patient and other health information and the prohibition on the use of telecommunications facilities and other mediums to transmit illegal, obscene, threatening, libelous, harassing, or offensive messages, or otherwise unlawful material;
 - iii. You will not: (a) abuse or misuse the Programs or the Services, including gaining, facilitating or attempting to gain unauthorized access to the programs or services; altering or destroying information in the programs except in accordance with accepted practices; (b) use the Programs or Services in such a manner that interferes with other Users' use of the System; or (c) use the Programs or the Services in any manner that violates this Agreement, our guidelines or those of concerned third parties and or our Licensors and or our Policies and Procedures. You are solely responsible for requesting and obtaining the relevant guidelines on your own.
 - iv. You acknowledge and agree that the programs and services, materials, and subscription/access provided hereunder or any other agreement or addendum thereof by CureMD or its licensors are not intended to be used as diagnostic tools or to provide medical diagnoses or determinations and the Licensee and its authorized users accept all the risk and are solely responsible for using due care and exercising their independent professional judgment with regard to patient examination, diagnosis, and treatment.
 - v. You will be responsible for ensuring that your authorized users follow proper procedures required by law and by good professional medical and data handling practice with regard to the form of patient records, consents to treat or disclose, and use of release of data. You acknowledge that in the event that license fees are not paid within thirty (30) days of when due, without limitation of CureMD rights to take actions, the licensed programs may automatically convert to read only mode until the delinquent license fees together with CureMD's standard late payment fees and reconnect charges are paid to CureMD. CureMD further

reserves the right to disable the Licensee's read-only access to the CureMD products, materials and services in case of continued default of payment within a period of 15 days thereafter.

- vi. You acknowledge and agree that You are solely responsible for ensuring that each authorized user is aware of the material terms of this agreement, and that no person who is not an authorized user be allowed access to the CureMD programs, related documents, and training materials etc. Authorized CureMD resellers are not authorized to execute any agreement on behalf of CureMD or otherwise bind or commit CureMD in any respect. Any agreement so executed on behalf of CureMD will be null and void.

c. **Safeguards:**

- i. You will be solely responsible to implement and maintain appropriate administrative, physical and technical safeguards to protect information within the Programs from unauthorized access, use or alteration or using a User ID assigned to you or a member of your Workforce. Such safeguards shall comply with federal, state, and local requirements, including the Privacy Rule and the Security Rule, whether or not you are otherwise subject to HIPAA. You will maintain appropriate security with regard to all personnel, systems, and administrative processes used by you or members of your Workforce to transmit, store and process electronic health information through the use of the Programs and Services.

- ii. Compliance: You will immediately notify us of any breach or suspected breach of the security of the Programs and Services of which you become aware, or any unauthorized use or disclosure of information within or obtained from the Programs and Services, and you will take such action to mitigate the breach or suspected breach as we may direct, and will cooperate with us in investigating and mitigating the breach.

You will comply with the terms of this Agreement, our Policies and Procedures, guidelines, including third party policies and procedures as applicable to you, and all applicable laws, rules and regulations. You will be solely responsible for the use of the Programs and Services by you and your Workforce, and to the extent allowed by law, shall indemnify us and hold us harmless from any claim, cost or liability arising from such use and caused by you, including reasonable attorneys' fees.

- iii. User Identification: We authorize you and your Authorized Workforce to use the User IDs assigned to you by us. You acquire no ownership rights in any User ID, and User IDs may be revoked or changed at any time in our sole discretion. You will adopt and maintain reasonable and appropriate security precautions for User IDs to prevent their disclosure to or use by unauthorized persons. Each member of your Authorized Workforce shall have and use a unique identifier. You will use your best efforts to ensure that no member of your Workforce uses a User ID assigned to another person.

- iv. No Third party Access: Except as required by law, you will not permit any third party (other than your Authorized Workforce) to have access to the Programs and or Services without our prior written agreement. You will promptly notify us of any order or demand for compulsory disclosure of health information if the disclosure requires access to or use of the Programs and Services. You will cooperate fully with us in connection with any such demand.

- v. Your Workforce: You may permit your authorized Workforce to use the Programs and Services on your behalf, subject to the terms of this Agreement. You will obtain a unique User ID from us for each member of your Authorized Workforce; train all members of your Authorized Workforce in the requirements of this Agreement and the guidelines and Policies and Procedures relating to their access to and use of the Programs and Services, and ensure that they comply with such requirements; take appropriate disciplinary action against any member of your workforce who violates the terms of this Agreement or the guidelines, Policies and Procedures; ensure that only you and your Authorized Workforce access the Programs and Services from Your Site; immediately notify us of the termination of employment of any member of your Authorized Workforce, or of your withdrawal of authorization for any such person to access the Programs and Services.
- vi. Compliance with Law: You are solely responsible for ensuring that your use of the Programs and Services (including making health information available through the Programs and Services) complies with applicable law. You will not undertake or permit any unlawful use of the Programs and Services, or take any action that would render the operation or use of the Programs and Services by us or any other User unlawful. We offer no assurance that your use of the Programs and Services under the terms of this Agreement will not violate any law or regulation applicable to you.
- vii. Professional Responsibility: You will be solely responsible for the professional, advisory, analytical and technical services you provide. We make no representations concerning the completeness, accuracy, availability or utility of any information in the Programs and Services, or concerning the qualifications or competence of individuals who placed it there. We have no liability for the consequences to you or your patients of your use of the Programs or Services.
- viii. Cooperation: You will cooperate with us in the administration of the Programs and Services, including providing reasonable assistance in evaluating the Programs and Services collecting and reporting data requested by us for purposes of administering the Programs and Services.

4) **Term of License**: The term of license for CureMD program shall commence from the date of first signature provided under the Subscription Proposal and shall continue for the period of time as specified in the Subscription Proposal. Either party can give notice of non-renewal, at least 90 days before the expiration of the first term, at its sole or absolute discretion, without cause and without stating any reason thereof.

Licensee may terminate this license on a 60 (sixty) days written notice if CureMD materially breaches any provisions of this Agreement, and such breach has not been cured after notice of the same within such 60 day period, and not otherwise.

- i. Modification: We may change the Programs and Services by providing you not less than thirty (30) days' written or electronic notice, and the terms under which they are provided to you (including terms set forth in this Agreement) at any time.

Upon receipt of such a notice or notification of the change in the terms of the Agreement

electronically provided within the Programs or in writing you may terminate this Agreement by giving written notice to us on or before the effective date of the change. You agree that your failure to give notice of termination prior to the effective date of the change in Programs and Services or acceptance of the change in the terms and conditions of this Agreement by pressing 'I Agree' Button in the CureMD Programs or receipt of the notice of the change in the terms and not objecting to the same prior to the effective date of the change constitute acceptance of the change, which shall thereupon become part of this Agreement.

- ii. Termination, Suspension or Amendment as a Result of Government Regulation: Notwithstanding anything to the contrary in this Agreement, we have the right, on notice to you, immediately to terminate, suspend, or amend this Agreement, without liability: (a) to comply with any order issued or proposed to be issued by any governmental agency; (b) to comply with any provision of law, any standard of participation in any reimbursement program, or any accreditation standard; or (c) if performance of any term of this Agreement by either Party would cause it to be in violation of law, or would jeopardize its tax-exempt status.
- iii. Judicial or Administrative Procedures: We may terminate this Agreement immediately upon written notice to you if: (a) you are named as a defendant in a criminal proceeding for a violation of federal or state law; (b) a finding or stipulation that you have violated any standard or requirement of federal or state law relating to the privacy or security of health information is made in any administrative or civil proceeding; or (c) you are excluded from participation in a federal or state health care program.
- iv. Insolvency or Bankruptcy: Licensor shall also have the right to immediately terminate the license if the Licensee discontinues business, or becomes insolvent, or if any action relating to the bankruptcy or insolvency of the Licensee is instituted.

Suspension of Access: We may suspend access to the Programs or the Services by you or any member of your Workforce immediately pending your cure of any material breach of this Agreement, or in the event we determine in our sole discretion that access to or use of the Programs or Services by you or the member of your Workforce may jeopardize the Programs or Services or the confidentiality, privacy, security, integrity or availability of information within the Programs and or Services, or that you or the member of your Workforce has violated or may violate this Agreement or our Policies and Procedures, or has jeopardized or may jeopardize the rights of any third party, or that any person is or may be making unauthorized use of the Programs and or Services with any User ID assigned to you or a member of your Workforce. We may terminate the access of any member of your Authorized Workforce upon termination or change in status of his or her employment with you. Our election to suspend the Services shall not waive or affect our rights to terminate this Agreement as permitted under this Agreement.

This Agreement and the rights granted are effective until terminated. Licensee's rights under this Agreement will terminate automatically without notice from CureMD if Licensee materially breaches any terms of this Agreement. Sections which by their terms contemplate survival will survive any termination of this Agreement.

As explained earlier, CureMD reserves the right to update the terms of this Agreement from time to

time and acceptance to the updated agreement shall be secured either electronically or on paper at the sole discretion of CureMD. The latest copy of the Agreement may be downloaded from within the CureMD Programs at any time or may be requested via fax or email.

Upon the effective date of termination of this Agreement, for any reason, the Licensee shall promptly:

(i) Return and deliver to CureMD all the CureMD Materials, documents, and manuals; (ii) Discontinue use of CureMD Programs, subscription and services; destroy copies of programs, materials, documents and manuals on the Licensee's System; (iii) Immediately render all sums and payments for all billed and unbilled invoices due and owing to CureMD the fees for the balance of the Term upon termination; (iv) In the event of termination for any material default or breach by the Licensee, pay to CureMD all expenses incurred by CureMD in the form of damages, additional costs and legal expenses, including reasonable attorney and expert fees; (v) Remove all software provided under this Agreement from your computer systems, cease to have access to the Programs and or Services, and return to us all hardware, software and documentation provided by or on behalf of us.

The foregoing rights and remedies of CureMD shall be cumulative without limiting any other additional rights and remedies available to CureMD at law, in equity or otherwise. If this Agreement is terminated for any reason, the rights of the Licensee arising under the Agreement shall terminate with immediate effect but:

(i) The obligations of the Licensee (other than those set forth in Sections 5 and other applicable sections of this Agreement); (ii) Any liability for unpaid license fees as well as any breach by the Licensee of any term or provision of this Agreement arising on or prior to the date of such termination, shall survive such termination.

Return of your Practice Data: If you decide to leave CureMD service, upon your request and at your expense, CureMD will make the copy of its database available to you in an industry standard format which allows your understanding and use the data. Unless you demand your practices data including patient records within 3 months of termination or expiration of this Agreement by paying the then applicable data transfer fees not to exceed \$3000 to CureMD, CureMD will not be liable to maintain such data on its own and shall destroy the data in accordance with the provisions of HIPAA. The Practice Data shall include complete medical records, patient demographics, patient insurance, list of all insurance plans, future provider and resource appointments, referring doctors, and fee schedules. Once the data is transferred to you and CureMD destroys the data in accordance with the provisions of HIPAA, the sole liability and responsibility as to your practice data including patient records rests with you.

Data Access: If there are disputes between CureMD and you, which have not been resolved through normal notice and cure resolution steps, including payment default, we reserve the right to immediately suspend or terminate your access until the default is cured.

DURING THE TERM OF THIS AGREEMENT AS WELL AS AFTER THE EXPIRATION OR TERMINATION HEREOF AND REGARDLESS THE CAUSE OF TERMINATION, YOU AGREE TO INDEMNIFY, DEFEND AND HOLD CUREMD HARMLESS FROM AND AGAINST ANY CLAIMS, DAMAGES, COSTS, LOSSES AND EXPENSES THAT YOU OR ANY THIRD PARTY MAY INCUR AS A RESULT OF (I) YOUR INABILITY TO CLAIM THE DATA WITHIN 3 MONTHS OF TERMINATION OR EXPIRATION OF THIS AGREEMENT REGARDLESS OF THE CAUSE OF TERMINATION, UNLESS SUCH INABILITY IS CAUSED BY CUREMD; OR (II) SUSPENSION, TERMINATION OR CHANGE OF YOUR ACCESS TO PROGRAMS AND SERVICES, UNLESS CUREMD WRONGFULLY, WITH GROSS NEGLIGENCE,

SUSPENDS, TERMINATES OR CHANGES ACCESS TO THE PROGRAMS AND SERVICES.

For purposes of software modifications, improvements and debugging, CureMD, its Licensors or agents have the right to enter your database at any time. This access to your information will be strictly for the purposes mentioned herein, and in full compliance with HIPAA regulations.

Additional Data Storage Space: The basic CureMD subscription comes with 5 gigabytes of free space. In case additional Data Storage space is required by you, CureMD will provide that additional space at an additional charge (Additional Data Storage Fees). CureMD reserves the right to implement guidelines concerning Data Storage Space and Service, and update those guidelines as needed. Your continued use of the Data Storage Space constitutes your acceptance of the then current guidelines.

5) **License Fees**: In case you are the client of the ASP version of the Programs, beginning on the Effective Date, you will pay directly to CureMD the monthly subscription fee in advance as specified in the CureMD Proposal. In case you are the client of the Web Server version of the Programs, beginning on the Effective Date, and on each anniversary thereafter, Licensee will pay directly to CureMD the cumulative Monthly License Fee then in effect as determined and specified by CureMD, in advance, for the license of each CureMD Program and Services for the following twelve months as specified in the CureMD Proposal. The Effective Date of the monthly subscription or yearly maintenance period shall be the day your account is activated through the implementation portal. The amount of the License and Subscription Fees and or other CureMD service charges may be changed by CureMD, from time to time, in accordance with CureMD's then current general pricing policies for CureMD Programs and Services.

Price revisions will be notified through the advance monthly invoices. In case Licensee does not agree to such revisions, Licensee may return the invoice marked "not acceptable" to initialize the early termination as per the termination procedure given herein.

The fee for subscribing to the Services ("Subscription Fee") is set forth in the Subscription Proposal. The Subscription or License Fees shall be determined on the basis of the number of Registered Providers authorized to use the Product, each of whom shall be registered (each, a "Registered User.") The Products may contain embedded controls limiting user log-on to the number of Registered Providers and such counters may interfere with use of the Products beyond the number of Registered Providers licensed. Office managers, secretaries and Nurses (not Nurse Practitioners) practicing directly in conjunction with a licensed provider do not require a separate license. The amounts payable shall be due and payable on the date specified in this Agreement or if not specified then within thirty (30) days of receipt of invoice therefore and payment must be made in U.S. Dollars. CureMD will assess Licensee a late payment charge on any amount which remains unpaid thirty (30) days after it is due, computed at the rate of one and one-half percent (1½%) per month or the highest allowable by law, whichever is lower, on the unpaid amount for every month the amount remains unpaid. All payments will be made without setoff, counterclaim, recourse or other defense. Nothing mentioned herein will limit any additional rights and remedies available to CureMD at law, in equity and / or otherwise arising due to the default of payment by the Licensee. Additional third party programs, network access, connectivity solutions, subscription services, tools, knowledge bases, data bases and libraries, etc. whether provided separately or within CureMD Program will be subject to additional charges, and their use shall be subject to the acceptance of their individual terms and conditions by the Licensee which will be communicated to Licensee from time to time. A reconnection fee equal to one (1) month's Subscription Fee shall be charged to re-establish connection after termination due to non-payment.

If Licensee adds one or more Registered Users to its practice, the software counters shall be adjusted to permit such Registered Users to use the Software, upon payment of additional License Fees at the rate specified herein, or the then-current rate, including any Support and Maintenance fees calculated at the then-current rate for additional providers, and pro-rated for the applicable portion of the year in which the provider(s) is added. If Licensee loses one or more Registered Users, there shall be no change in the

License Fees.

Licensee acknowledges and agrees that there shall be no refunds under this Agreement for any reason, any service delivered or scheduled to be delivered, whatsoever, including termination of this Agreement regardless of the cause of such termination. In case Licensee requests early termination for any reason whatsoever, Licensee shall be liable the early termination penalty mentioned in the Subscription Proposal.

This will cover all internal and third party costs that CureMD incurred for the creation and functioning of Licensor's account for the agreed upon term hereof, and other out of the pocket expenses related thereto.

Licensee also agrees to pay, at our then current rates, for all additional products, features, or services that Licensee requests from CureMD. Licensee also agrees to pay, at our then current rates, for all products, features or services that Licensee requests from CureMD and that are not included in our standard product and services ("Miscellaneous Charges"). CureMD will notify Licensee of the applicable Miscellaneous Charges before performing services or providing features and or products to which a Miscellaneous Charge will apply. The Miscellaneous Charges may change from time to time. Current fees and charges may be obtained by calling 718-360-0597.

6) Bug fixes and Updates: So long as the subscription for a Program is in effect, subject to the timely payment of CureMD fees and dues, the Licensee will be entitled to receive bug fixes available to other CureMD customers for that program version. CureMD may issue Updates/upgrades from time to time and will specify, in its sole discretion any costs that may be associated with the updates so issued. Updates, if issued, may apply to selected Programs, modules, features, or platforms, as may be specified by CureMD from time to time.

In case of payment default, the issuance of updates may be stopped and CureMD may specify any other service charges in addition to the clearance of outstanding subscription/service charges, financial charges etc., and there may be additional charges for the resumption of services and updates. Major product updates requiring migration of key business processes or data elements or templates and/or other configuration will be charged as per the standard development rates by CureMD. CureMD shall retain sole editorial discretion with respect to the licensed programs and services and the information contained therein and retain the right to revise, supplement or discontinue the licensed programs and services or any portion thereof or information contained therein.

7) Support Services: CureMD shall provide Licensees with telephone support for the Software during business hours, which are 7:00 a.m. to 8:00 p.m. Eastern Standard Time, Monday through Friday, excluding **holidays** (the "Business Hours") subject to: (i) timely payment of CureMD invoices and support fees, and (ii) Licensee's compliance with its obligations under this Agreement. Upgrades, maintenance and phone support is provided for Client hosted installations for a 20% charge of the accumulative license fee of all Providers plus the base system cost. Extended support shall be available at the request of the Licensee at the rate of \$250 per hour. Licensee agrees that all timings and costs, specified herein, may be changed at the discretion of CureMD without any prior notice to the Licensee.

8) Communication: Licensee will obtain, and at all times maintain, a Telnet/pcAnywhere

connection and other peripherals/communication platforms, as may be required by CureMD, to initiate communications with, and receive communications from, CureMD. Licensee will arrange for such Programs and or peripherals/communication platforms to connect with CureMD system when required. Licensee authorizes CureMD and its staff to send and receive electronic communications through such communication platforms for the following purposes:

(i) To send or receive e-mail communications; (ii) To modify or provide Updates to any software Program; (iii) To maintain the Accounting Log; (iv) To perform maintenance or support services; (v) To verify the list of CureMD Authorized Users; (vi) To monitor functionality of the Programs; (vii) In each case with prior consent of the Licensee, to retrieve Reference information (as hereinafter defined).

All charges, such as for example, installation, usage, maintenance and outgoing toll charges for the modem telephone line and above mentioned communication platforms shall be at Licensee's expense.

9) System Monitoring, Compliance, Taxes and other Guidelines: CureMD reserves the right to monitor the System electronically from time to time and to access and disclose any information as permitted or required by applicable laws or regulation, to operate its System properly, or to protect itself or others. It is not CureMD's intention that the Services, System or CureMD's facilities be used in contravention of the Communications Decency Act of 1996, 47 U.S.C. Section 223, or any other applicable law.

It is Licensee's responsibility to ensure that its usage of CureMD at all times remains compliant with all applicable Federal, and State laws, rules and regulations. Licensee shall, to the extent allowed by law, indemnify and defend CureMD for any claims, suits, losses or actions against CureMD arising from, related to or in connection with any violation caused by Licensee of the Communications Decency Act, and other applicable State, Federal law, rules and regulations.

Licensee agrees to use or disclose any Individually Identifiable Health Information (IIHI) obtained or sent through the licensed programs and services including without limitation Surescripts System and or other third party programs, components and services only in a manner consistent with all Applicable Law, including HIPAA and including obtaining any consents or authorizations required to be obtained by such Applicable Law, and that all consents and authorizations will allow disclosure of all data elements transmitted through the Surescripts System whether or not Licensee intends to utilize such data elements.

Licensee will under no circumstances use or allow any use of any data accessed by the Licensee through the Surescripts System other than for the specific purposes identified below:

- i. Patient visit services may be accessed by the Licensee only in connection with the treatment of a specific patient in a scheduled or walk-in outpatient visit or another specific treatment event. Licensee shall not access or attempt to access these services in connection with any inpatient or other acute service or in connection with any institutional service.
- ii. Medication history transaction allows Licensee to request medication history for a specific patient utilizing the National Council for Prescription Drug Programs ("NCPDP") transaction segment syntax then implemented by Surescripts.

Licensee will allow CureMD and/or its licensors including without limitation Surescripts to access,

inspect and audit records of the Licensee relating to the use of the licensed programs and services including Surescripts System, Surescripts Data and data or information provided by Participants (Participants means the data sources, pharmacy benefit manager, health benefit payor or administrator, prescribers health care providers or facilities, pharmacies, information system vendors, or other entities, each of which has entered into a written agreement with Surescripts, or has the right through another entity's written agreement with Surescripts, to access, provide or communicate information through the Surescripts System.)

In the event that CureMD grants Licensee permission to modify any of the CureMD Programs, then Licensee assumes all liability for such modified programs. Licensee hereby acknowledges and agrees that CureMD disclaims all warranties, express or implied, regarding any Licensee-modified programs.

All charges and fees shall be exclusive of all federal, state, municipal, or other government excise, sales, use, occupational, or like taxes now in force or enacted in the future, and you agree to pay any tax (excluding taxes on our net income) that we may be required to collect or pay now or at any time in the future and that are imposed upon the sale or delivery of items and services purchased under this Agreement.

In case of Licensee signing up for any additional feature, product or service with CureMD, the terms and conditions of this Agreement shall prevail and be applicable, and an additional addendum for the pricing of that additional feature, product or service shall be signed.

Licensee is solely responsible for any charges that Licensee incurs to use the Products and Services, such as telephone and equipment charges, and fees charged by third party vendors of products and services.

10) Reference Information & Data Migration: CureMD from time to time may request (by letter, facsimile, or electronic communication) to retrieve information as specified in the request including but not limited to usage patterns, behaviors, trends, error reports, etc. and other information to help improve product and service quality, use the information for staff training, etc. The Licensee shall not unreasonably withhold or delay approval of such requests.

You understand and agree that prior to contacting or allowing CureMD to perform clinical or billing data migration from your previous systems and or databases or to perform any other services on your computer, it is your responsibility to back-up the data, software, information or other files stored on your computer disks and/or drives.

CureMD will not be held responsible for any problems arising from third party software installed on your computer by our technicians, you, or other third party. CureMD will not be held liable for lost data due to hardware failure, virus, spyware, corruption or any other situation. If any problems with third party software or hardware arise, it is your responsibility to obtain support from the manufacturer of the product at fault.

Keeping in view the limitations of the online data migration process, in addition to the issues and failures which may result from, including without limitation, non-availability of technical support staff at your practice's location; incompatibilities in data formats; already-corrupted data, you acknowledge and agree that the migration will be at your sole and exclusive risk. You also acknowledge and agree that CureMD assumes no liability or responsibility for any loss or damage of any kind whatsoever arising from or related to this migration including without limitation to incorrect, missing, lost or corrupted data.

Under no circumstances shall CureMD be liable to you or any other person for any damages, including without limitation any indirect, incidental, special or consequential damages, expenses costs, profits, lost savings or earnings, lost or corrupted data, or other liability arising out of or related to the services provided by CureMD or out of the installation, de-installation, migration, use of, or inability to use your computer equipment, hardware, peripherals, database, or the network as a result of the services provided hereunder.

11) Indemnity: CureMD, subject to the limitations on its liability set forth in Section 22 and other applicable sections hereof, shall hold harmless and defend Licensee against suits based solely on a claim that the use of licensed program by Licensee in accordance with the terms hereof, infringes on any U.S. patent, copyright or trademark, and the use of such program in such manner is prohibited by a court of competent jurisdiction, provided that Licensee gives CureMD prompt written notice of such suit and gives CureMD full authority, information and assistance to defend such suit, and permits CureMD to control the defense thereof.

However, this indemnity will not apply unless Licensee gives CureMD prompt notice of such claim or action alleging such infringement and has given CureMD full opportunity and sole authority to control the response thereto and the defense thereof, including, without limitation, any agreement relating to settlement. CureMD shall have no obligation to the extent a claim is based upon:

(i) use of any version of program which is altered by, or at the request of Licensee, if infringement would have been avoided by a current, unaltered version; or(ii) combination, operation or use of the program with software and/or hardware not delivered by CureMD if such infringement could have been avoided by not combining, operating or using of the program with such software and/or hardware.

Remedial Measures: If the licensed program becomes the subject of a claim, or if CureMD reasonably believes that use of licensed program may become the subject of a claim, then CureMD may do, at its own expense and option, at least one of the following:

(i) procure for Licensee the right to continue use of the licensed program at no additional cost to Licensee for such right; (ii) replace the licensed program with a non-infringing product; (iii) modify the licensed program so that it becomes non-infringing; or(iv) terminate Licensee's license to such program upon written notice to Licensee, whereupon Licensee shall immediately terminate all further use of the affected licensed program.

In the event of termination, CureMD shall have no liability to Licensee or any other third party concerning their use of such CureMD program except to refund to Licensee a pro rata portion of the License Fees, actually paid to CureMD, and applicable to the remaining term of the Agreement.

No other Remedies Regarding Infringements: THE FOREGOING STATES CUREMD'S ENTIRE LIABILITY AND LICENSEE'S SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO ANY INFRINGEMENT, ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY BY THE LICENSED PROGRAM OR ANY PART THEREOF.

CureMD's indemnification obligations under this Section 11 shall not apply in the event that any of the losses are covered by Licensee's indemnification obligations set forth under Section 19 hereof.

CureMD may from time to time, in user documentation or through other communications, provide the Licensee with recommended procedures for dealing with confidentiality of patient records, with patient informed consent in regard to use and maintenance of patient clinical records, and with other matters relating to patient information. However, CureMD makes no representation or warranty, express or implied, with respect to the legal effect of such recommendations, and the Licensee acknowledges that the Licensee and Licensee's Authorized Users are responsible for ensuring that those procedures required by law and by good professional medical practice are followed with regard to the copies of patient records, , consent to treatment or disclosure, and use and release of data. CureMD shall not be liable under the foregoing indemnity or obligations under Section 10 above for claims arising from failure of the Licensee to fulfill such responsibilities and CureMD shall be entitled to assume that the Licensee has fulfilled such responsibilities.

12) Drug Interaction Tool: (For subscriptions that include The CureMD Drug Interaction Tool (the "Drug Interaction Service"), a service provided to CureMD.com by MEDI-SPAN, a part of Wolters Kluwer Health, Inc. ("MediSpan")) Through your use of the Drug Interaction Service, you agree to the terms of this section of the Terms and Conditions of Use. CureMD and MediSpan are not responsible for the results of your decisions resulting from the use of the Drug Interaction Service, including, but not limited to, your choosing to seek or not to seek professional medical care, or from choosing or not choosing a specific treatment based upon the Drug Interaction Service. MediSpan and CureMD do not guarantee the accuracy, timeliness or completeness of the drug information provided through the Drug Interaction Service. CureMD and MediSpan do not endorse drugs, diagnose patients or recommend therapy. The Drug Interaction Service is an informational resource designed to assist licensed healthcare providers in caring for their patients and provide consumers with drug-specific information. The Drug Interaction Service is not a substitute for the care provided by licensed healthcare providers and you are urged to consult with your healthcare provider in all instances. The absence of a warning for a given drug or drug combination in no way should be construed to indicate that the drug or drug combination is safe, effective or appropriate. CureMD and MediSpan do not assume any responsibility for any aspect of healthcare services administered or not administered with the aid of information the Drug Interaction Service.

13) Licensee Information: The Licensee warrants that the Authorized Users information provided to CureMD is true and complete and the Licensee will promptly inform CureMD when such information changes thereafter. The Licensee further represents and warrants that each Authorized User is legally bound as Licensee hereunder.

14) Licensee Authority: The Licensee represents and warrants that it has obtained each approval, authorization and consent necessary to enter into this Agreement and perform its obligations, comply with the terms and conditions, and engage in the actions contemplated by this Agreement. The Licensee warrants that to the best of its knowledge no conflict of interest exists or is likely to arise in the performance of its obligations under the Agreement. The Licensee agrees that for the term of this agreement and for all succeeding terms, the Licensee shall not enter into any contractual obligations with any CureMD competitors and shall refrain from direct communication with CureMD's competitors regarding CureMD Products and Services, including but not limited to its features, performance benchmarks and any other information not publicly available.

Individuals' Rights: You shall be solely responsible for affording individuals their rights with respect to Your Health Information, such as the rights of access and amendment. You will not undertake to afford

an individual any rights with respect to any information in the Programs and Services other than Your Health Information.

15) **Relationship of CureMD and the Resellers:** The Licensee agrees and acknowledges the relationship of CureMD and its authorized independent resellers (the "Resellers") is that of an independent contractor. The Resellers do not have any right or authority to bind or assume or create any obligation or responsibility, express or implied, for or on behalf of CureMD, or in CureMD's name. CureMD and the Resellers are not partners or joint ventures and their relationship is not one of employer and Employee, master and servant, franchiser and franchisee, or principal and agent. The Licensee agrees that CureMD is not responsible for any act, omission, failure or damage relating to work or any other matter performed by, or on behalf of, any Reseller for the Licensee, any Authorized User, or any other Person.

16) **Title:** The Licensee agrees that, as between CureMD and the Licensee, CureMD shall have sole and exclusive ownership of, and all right, title, and interest in and to, the CureMD Materials, including the Programs and Material, and all modifications and enhancements of the Programs or User Manuals (including ownership of all copyrights and other intellectual property rights), subject only to the rights expressly granted to the Licensee under this Agreement. This Agreement does not provide the Licensee with title or ownership of any CureMD Material, but only a limited right to use the same solely upon the terms expressly set forth in this Agreement.

17) **Use of Information:**

- a. The purpose of the CureMD Programs and Services is to store Your Health Information and (i) to make it available to you and your Authorized Workforce; and (ii) to facilitate the sharing of individuals' health information among Users and Patients.

You may make Your Health Information accessible to other Users through the Programs and Services for these purposes. You authorize us, as your business associate, to use and disclose Your Health Information as follows, subject to the recipient's agreement to comply with our and our Licensors Policies and Procedures and with applicable laws and regulations relating to the use and disclosure of health information, and subject also to the provisions of Section 18(b).

- b. Provided you allow access and disclosure and do not restrict access for any particular information or patient, we may: (i) permit access to Your Health Information to you, Your Authorized patients and your Authorized Workforce; (ii) permit access to Your Health Information by health care providers and their business associates for treatment; (iii) disclose or permit access to your Your Health Information to health plans, health care clearinghouses, medical groups, independent practice associations and other parties responsible for payment and their business associates for the purpose of obtaining payment for services you provide; (iv) aggregate your de-identified health information with that of other users, and share aggregated information among Users; (v) use Your Health Information for the proper management and administration of the CureMD Programs and Services and our business, and to carry out our legal responsibilities; we may also disclose Your Health Information for such purposes if the disclosure is required by law, or we obtain reasonable assurances from the recipient that it will be held confidentially and used or further disclosed only as required by law

or for the purpose for which it was disclosed to the recipient, and the recipient notifies us of any instances of which it is aware in which the confidentiality of the information has been breached. Without limiting the foregoing, we may permit access to the Programs and Services by our contracted system developers under appropriate confidentiality agreements. (viii) use or disclose Your Health Information for other purposes, as from time to time described in our Policies and Procedures; provided that we will not make or permit any such use or disclosure that would violate applicable law or regulation if made by you or your business associate. Except as provided in subsection 17(b)(iv) and 17(b)(v), and notwithstanding any other provision of this section, we will not use or disclose Your Health Information in any manner that would violate the requirements of the Privacy Rule.

- c. Responsibility for Misuse by Other Users: You acknowledge that in granting access to the CureMD Programs and Services for the purposes set forth in section 17(a) & (b), we will rely on the assurances of the recipients of the information as to (i) their identity and credentials, (ii) the purposes for which they are accessing the CureMD Programs and Services, and (iii) the nature and extent of the information to which they will have access. You acknowledge that, while the CureMD Programs and Services will contain certain technical safeguards against misuse of the CureMD Programs and Services, it will rely to a substantial extent on the representations and undertakings of Users. You agree that we will not be responsible for any unlawful access to or use of Your Health Information by any User resulting from the User's misrepresentation to us, or breach of the User's user agreement or our Policies and Procedures or guidelines including third party guidelines, policies and procedures as applicable on you and your Workforce or Authorized Users.
 - d. Specially Protected Information: We apply the standards of the Privacy Rule in permitting access to the CureMD Programs and Services. You acknowledge that other federal and state laws, rules and regulations impose additional restrictions on the use and disclosure of certain types of health information, or health information pertaining to certain classes of individuals. You agree that you are solely responsible for ensuring that Your Health Information may properly be disclosed for the purposes set forth in section 17(a) & (b), subject only to the restrictions of the Privacy Rule, unless you notify us of restricted access. In particular, unless you notify us of any restricted access, you will: not make available through the Programs and Services any information subject to any restriction on use or disclosure (whether arising from your agreement with the individual or under law), other than the general restrictions contained in the Privacy Rule; obtain any necessary consents, authorizations or releases from individuals required for making their health information available through the Programs and Services for the purpose set forth in section 17(a) & (b); include such statements (if any) in your notice of privacy practices as may be required in connection with your use of the Programs and Services; not place in the Programs any information that you know or have reason to believe is false or materially inaccurate.
- 18) HIPAA; Business Associate Provisions and De-identified Information:**
- a. To the extent required by the Health Insurance Portability and Accountability Act of 1996 and regulations related to privacy promulgated there under (the "Privacy Standard"), and notwithstanding anything to the contrary herein, CureMD will maintain the confidentiality of Protected Health Information or PHI as defined by the Privacy Standard, CureMD will: not use or further disclose PHI other than as permitted or required by this Agreement or as required by law (as such term is defined by the Privacy Standard); use appropriate safeguards to prevent use or

disclosure of PHI other than as provided for by this Agreement; report to Licensee any use or disclosure of PHI not provided for by this Agreement of which CureMD become aware; ensure that any agent, including a subcontractor to whom CureMD provides PHI received from, or created or received by Licensee on behalf of, Licensee agrees in writing to the provisions of this Agreement; mitigate, to the extent practicable, the harmful effect of any use or disclosure of PHI not permitted by this Agreement; upon expiration or termination of this Agreement, return to Licensee or destroy all PHI received from, or created or received on behalf of Licensee (including all copies thereof) then in CureMD possession or under its control; or if, return or destruction is not feasible, provide Licensee with written notice in which CureMD describes why return or destruction is not feasible and agree in writing to extend the protections of this Section to the PHI and limit further uses and disclosures to those purposes that make return or destruction infeasible. CureMD agrees that this Agreement may be amended from time to time if necessary to comply with HIPAA. The requirements of this Section will survive this Agreement.

- b. Business Associate Provisions: In maintaining, using and affording access to Your Health Information in accordance with this Agreement, we will:
- i. Not use or further disclose the information except as permitted or required by this Agreement or as required by law;
 - ii. Use appropriate safeguards to prevent use or disclosure of the information other than as provided for by this Agreement, including administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the information;
 - iii. Report to you any use or disclosure of the information not provided for by this Agreement of which we become aware, or any security incident as a result of which we determine that unauthorized access has been obtained to Your Health Information;
 - iv. Ensure that any of our agents or subcontractors to whom we provide Your Health Information for purposes of assisting us in providing the Programs or the Services, agrees to the same restrictions and conditions that apply to us with respect to such information, including the obligation to implement reasonable and appropriate safeguards to protect it (it being understood that other Users of the System are not our agents or subcontractors);
 - v. Make available protected health information in accordance with ¶ 164.524 of the Privacy Rule;
 - vi. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with ¶164.526 of the Privacy Rule;
 - vii. Make available the information required to provide an accounting of disclosures in accordance with ¶ 164.528 of the Privacy Rule;
 - viii. Make our internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by us on your behalf

available to the Secretary of the United States Department of Health and Human Services for purposes of determining your compliance with the Privacy Rule; and

- ix. At termination of this Agreement, if feasible, return or destroy all protected health information received from, or created or received by us on your behalf that we still maintain in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible. You acknowledge that it will likely be infeasible to segregate Your Health Information for removal from the System. However, we will provide you with an electronic copy of Your Health Information in the format in which it is produced by our standard procedures for copying or archiving such information. You acknowledge that you may have to purchase proprietary software in order to access such information.

19) Indemnity by Licensee: To the fullest extent permitted by law, you will indemnify, defend and hold harmless CureMD, its Licensors and other users as well as ours and their affiliates and their respective directors, officers, employees, agents and representatives from and against any and all losses, damages, demands, claims, costs, penalties, injuries, interest, or expenses (including without limitation reasonable attorney fees) caused by Licensee or its Workforce, sustained by you or CureMD or any third party, at all levels of litigation or other proceeding at any time, arising out of or relating to (i) the use, non-use or misuse of the Programs and or Services provided under this Agreement or any portion thereof by Licensee or its Workforce; (ii) any act or omission including tortious act as well as breach by Licensee or its Workforce of any representations, warranties, obligations, responsibilities or agreements contained in this Agreement; (iii) the modification of the Programs and Services provided under this Agreement or any information contained therein, integration, alteration or the combination of all or part of Programs and or Services with any other software, program, product or device that is not expressly permitted under this Agreement, by or at the request of the Licensee, the user or the Workforce, regardless of whether or not we gave our consent to or performed such combination, integration, alteration or modification; (iv) any personal injury or death sustained by an individual, any third party or another, arising from the Programs and Services provided under this agreement and caused by Licensee or its Workforce; (v) Licensee's violation of federal, state or local laws, rules or regulations that may arise related to this Agreement; (vi) any act or omission (negligent, willful or otherwise) or misconduct by Licensee, its directors, officers, Workforce, employees, contractors, or agents relating to this Agreement; (vii) the actions of any person (who is not agent or employee of CureMD) gaining access to the Programs and Services under a User ID assigned to you or a member of your Workforce; (viii) the use or consumption of Programs and or Services or any part thereof by Licensee or its Workforce not in conformance with CureMD's or its Licensor's guidelines, policies, procedures, recommendations, training/education material; (ix) ignoring standard workflows or following a way other than the recommended procedure/workflow or functionality built into the Programs or non-use of a standard or recommended workflow, functionality etc.; (x) any errors or inaccuracies contained in the patient data or practice data as delivered by Licensee to CureMD; (xi) any

medical treatment, diagnosis, or prescription rendered by Licensee or its agents (including physicians and healthcare professionals); or (xi) the actions of anyone who is not agent or employee of CureMD using a User ID, password or other unique identifier assigned to you or any member of your Workforce that adversely affects the Programs and or Services or any information accessed or any action performed through the Programs and or Services, provided however, you may not enter into any settlement that would admit any wrongdoing by or impose any liability on the part of CureMD, or impose any obligation on CureMD, without CureMD's prior written consent.

20) DISCLAIMER: IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL CUREMD, ITS LICENSORS INCLUDING SURESCRIPTS AS WELL AS DISTRIBUTORS BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, OR LOSS OF INFORMATION OR DATA, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY, EVEN IF WE HAVE BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. WE DISCLAIM ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS OR THE SYSTEM.

YOU ACKNOWLEDGE AND AGREE THAT THE FEES AND OTHER CHARGES WHICH CUREMD IS CHARGING UNDER THIS AGREEMENT DO NOT INCLUDE ANY CONSIDERATION FOR ASSUMPTION BY CUREMD OF THE RISK OF CLIENT'S DIRECT, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES OR OF UNLIMITED DIRECT DAMAGES.

LICENSEE AGREES THAT EACH PROGRAM AND EACH OF THE OTHER CUREMD MATERIALS AND SERVICES AND INFORMATION CONTAINED THEREIN OR PROVIDED THEREWITH ARE PROVIDED ON "AS IS" AND "AS AVAILABLE" BASIS ONLY, WITHOUT WARRANTY OF ANY KIND, AND ALL EXPRESS, IMPLIED OR STATUTORY WARRANTIES, CONDITIONS, REPRESENTATIONS, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, TIMELINESS, COMPLETENESS, ADEQUACY AND NON-INFRINGEMENT OR WARRANTY ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OR TRADE ARE EXCLUDED BY CUREMD. CUREMD DOES NOT WARRANT THAT THE PROGRAMS WILL MEET THE REQUIREMENTS OF ANY PERSON AND OPERATE ON AN UNINTERRUPTED OR ERROR-FREE BASIS. LICENSEE IS SOLELY RESPONSIBLE FOR ANY AND ALL ACTS OR OMISSIONS TAKEN OR MADE IN RELIANCE ON THE PROGRAMS AND SERVICES OR THE INFORMATION CONTAINED THEREIN, INCLUDING INACCURATE OR INCOMPLETE INFORMATION.

WITHOUT LIMITING THE FOREGOING, CUREMD AND ITS LICENSORS DO NOT WARRANT THE QUALITY, ACCURACY, OR SUITABILITY OF INFORMATION PROVIDED THROUGH THE CUREMD PROGRAMS FOR ANY PURPOSE. THE LICENSEE AGREES THAT CUREMD HAS MADE NO AGREEMENTS, REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND THAT NO FUTURE AGREEMENT, REPRESENTATION OR WARRANTY OF CUREMD WITH REGARD TO PROGRAMS OR SERVICES PROVIDED UNDER THIS AGREEMENT SHALL BE EFFECTIVE UNLESS EXPRESSLY STATED IN AN AMENDMENT TO THIS AGREEMENT SIGNED BY BOTH PARTIES.

SURESCRIPTS USES AVAILABLE TECHNOLOGY TO MATCH PATIENT IDENTITIES WITH THEIR PRESCRIPTION DRUG BENEFIT AND PRESCRIPTION DRUG RECORDS IN ORDER TO PROVIDE PHYSICIANS WITH PATIENTS' PRESCRIPTION DRUG BENEFIT AND MEDICATION HISTORY INFORMATION. BECAUSE PATIENT INFORMATION IS MAINTAINED IN MULTIPLE PLACES, NOT ALL OF WHICH ARE ACCESSIBLE TO SURESCRIPTS, AND BECAUSE NOT ALL PATIENT INFORMATION IS KEPT IN A STANDARD FASHION OR IS

REGULARLY UPDATED, IT IS POSSIBLE THAT FALSE MATCHES MAY OCCUR OR THAT THERE MAY BE ERRORS OR OMISSIONS IN THE PRESCRIPTION DRUG BENEFIT OR MEDICATION HISTORY INFORMATION. THEREFORE, ANY TREATING PHYSICIAN OR OTHER HEALTH CARE PROVIDER OR FACILITY SHOULD VERIFY PRESCRIPTION DRUG BENEFIT OR MEDICATION HISTORY INFORMATION WITH EACH PATIENT AND/OR THE PATIENT'S REPRESENTATIVES BEFORE SUCH INFORMATION IS RELIED UPON OR UTILIZED IN DIAGNOSING OR TREATING THE PATIENT. SURESCRIPTS IS NOT A HEALTH PLAN, HEALTH CARE PROVIDER OR PRESCRIBER.

CUREMD AND ITS LICENSORS INCLUDING SURESCRIPTS DO NOT AND CANNOT INDEPENDENTLY VERIFY OR REVIEW THE INFORMATION TRANSMITTED THROUGH THE LICENSED PROGRAMS AND SERVICES INCLUDING SURESCRIPTS SYSTEM FOR ACCURACY OR COMPLETENESS.

CUREMD AND ITS LICENSORS INCLUDING SURESCRIPTS MAKE NO REPRESENTATION OR WARRANTY REGARDING THE AVAILABILITY THROUGH THE SURESCRIPTS SYSTEM AND OTHER LICENSED PROGRAMS AND SERVICES OF ANY PARTICULAR DATA SOURCE OR OTHER PARTICIPANT. AT ANY TIME, DATA SOURCES OR OTHER PARTICIPANTS MAY BE ADDED TO OR DELETED FROM THE SURESCRIPTS SYSTEM OR MAY LIMIT LICENSEE ACCESS TO THEIR DATA, AND SUCH CHANGES MAY OCCUR WITHOUT PRIOR NOTICE TO CUREMD OR LICENSEE.

THE LICENSEE ACKNOWLEDGES THAT CUREMD: HAS NO CONTROL OF OR RESPONSIBILITY FOR THE LICENSEE'S USE OF THE SERVICE OR CONTENT PROVIDED THEREON; HAS NO LIABILITY TO ANY PERSON FOR ANY DATA OR INFORMATION INPUT ON THE SERVICE BY THE LICENSEE TO THE SERVICE.

CARRIER LINES: YOU ACKNOWLEDGE THAT ACCESS TO THE PROGRAMS AND SERVICES WILL BE PROVIDED OVER VARIOUS FACILITIES AND COMMUNICATIONS LINES, AND INFORMATION WILL BE TRANSMITTED OVER LOCAL EXCHANGE AND INTERNET BACKBONE CARRIER LINES AND THROUGH ROUTERS, SWITCHES, AND OTHER DEVICES (COLLECTIVELY, "CARRIER LINES") OWNED, MAINTAINED, AND SERVICED BY THIRD PARTY CARRIERS, UTILITIES, INTERNET SERVICE PROVIDERS, ALL OF WHICH ARE BEYOND OUR CONTROL. WE ASSUME NO LIABILITY FOR OR RELATING TO ANY DELAY, FAILURE, INTERRUPTION, INTERCEPTION, LOSS, TRANSMISSION, OR CORRUPTION OF ANY DATA OR OTHER INFORMATION ATTRIBUTABLE TO TRANSMISSION ON THE CARRIER LINES. USE OF THE CARRIER LINES IS SOLELY AT YOUR RISK AND IS SUBJECT TO ALL APPLICABLE LOCAL, STATE, NATIONAL, AND INTERNATIONAL LAWS.

UNAUTHORIZED ACCESS; LOST OR CORRUPT DATA: WE ARE NOT RESPONSIBLE FOR UNAUTHORIZED ACCESS, TO THE EXTENT THAT THE UNAUTHORIZED ACCESS IS NOT BY CUREMD'S EMPLOYEES OR AGENTS, TO YOUR DATA, FACILITIES OR EQUIPMENT BY INDIVIDUALS OR ENTITIES USING THE PROGRAMS AND OR SERVICES OR FOR UNAUTHORIZED ACCESS, TO THE EXTENT THAT THE UNAUTHORIZED ACCESS IS NOT BY CUREMD'S EMPLOYEES OR AGENTS, TO, ALTERATION, THEFT, CORRUPTION, LOSS OR DESTRUCTION OF YOUR DATA FILES, PROGRAMS, PROCEDURES, OR INFORMATION THROUGH THE SYSTEM, WHETHER BY ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER MEANS. YOU ARE SOLELY RESPONSIBLE FOR VALIDATING THE ACCURACY OF ALL OUTPUT AND REPORTS, AND FOR PROTECTING YOUR DATA AND PROGRAMS WHICH IS HOSTED LOCALLY BY YOU, FROM LOSS BY IMPLEMENTING APPROPRIATE SECURITY MEASURES, INCLUDING ROUTINE BACKUP PROCEDURES. YOU HEREBY WAIVE ANY DAMAGES OCCASIONED BY LOST OR CORRUPT DATA, INCORRECT REPORTS, OR INCORRECT DATA FILES RESULTING FROM OPERATOR ERROR, EQUIPMENT SOFTWARE MALFUNCTION, LICENSEE-SIDE SECURITY VIOLATIONS, OR THE USE OF THIRD PARTY SOFTWARE. WE ARE NOT RESPONSIBLE FOR THE CONTENT OF ANY INFORMATION TRANSMITTED OR RECEIVED THROUGH OUR PROVISION OF THE SERVICES.

21) **Service Level Guarantee:** CureMD guarantees to have your subscription access available through internet access 99% of the time in any given month. In the event that your access is not available for more than 99%, CureMD will credit the following month's service fee as follows. Such credit shall be retroactive and shall be as calculated below and as measured 24 hours a day in a calendar month, with the maximum credit not to exceed fifty (50) percent of the monthly subscription charge for the affected month.

Monthly Uptime Percentage	Credits
95% to 98.9%	10%
90% to 94.9%	20%
89.9% or below	50%

In order for you to receive a credit on your account, you must request such credit within seven (7) days after you experienced the down time. You must request credit by sending an electronic mail message to support@curemd.com. For security, the body of this message must contain your account number, the dates and times of the unavailability, and such other Licensee identification requested by CureMD. Credits will usually be applied within sixty (60) days of your credit request. Credit to your account shall be your sole and exclusive remedy in the event of outage or service degradation. This Service Level guarantees and credits are subject to Force Majeure Clause hereof, as well as availability of Licensee systems and access capability at the time of outage. This guarantee applies to Licensees in good financial standing with CureMD at the time of a service outage. CureMD retains sole discretionary power when determining whether or not this guarantee has been met.

This guarantee and all its terms apply to additional services subscribed to by Licensee. For instance: implementation, data entry, DRT (discrete reportable transcription), custom development, data migration, training and support, revenue cycle management (CureBilling), etc. for all these services, the Monthly Uptime will mean the percentage of error-free-service delivery guaranteed by CureMD hereunder. The service levels credits will apply accordingly.

The issuance of credits to you hereunder shall be your sole and exclusive remedy for any claim arising under this paragraph and you hereby waive the right of any action, legal or otherwise, against CureMD by accepting the applicability of the Service Level Credits to any claims you might have relating to the quality of service under this paragraph. This provision shall not affect any other right, claim or remedy which you may be entitled under this Agreement and beyond the scope of this paragraph and CureMD's service level guarantee.

22) **Limitation of Liabilities:** IT IS EXPRESSLY AGREED THAT IN NO EVENT CUREMD OR ANY OF THE DIRECT OR INDIRECT OWNERS OF CUREMD, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, STOCKHOLDERS, AGENTS, AND EMPLOYEES, OR ANY LICENSORS OF CUREMD SHALL HAVE ANY LIABILITY WHATSOEVER FOR INSTANCES INCLUDING BUT NOT LIMITED TO ANY LOSS OR CORRUPTION OF DATA, ANY INABILITY TO RECORD OR ACCESS DATA, ANY FAILURE TO RESTORE DATA, OR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES OR GOODWILL, LOSS OF USE, OR LOSS OF INFORMATION OR DATA, OR FROM INCREASED EXPENSES OR COSTS, FORESEEABLE OR UNFORESEEABLE, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY, EVEN IF CUREMD HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING THAT MAY BE INCURRED OR SUFFERED BY

THE LICENSEE OR ANY OTHER PERSON FROM THE USE OR INABILITY TO USE THE PROGRAMS AND SERVICES WHETHER UNDER THE LAWS OF CONTRACT, STRICT LIABILITY, TORT OR OTHERWISE, ARISING FROM THOSE OR OTHER CAUSES. CUREMD DISCLAIMS ANY AND ALL LIABILITY FOR

ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS OR THE PROGRAMS.

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, OUR AGGREGATE LIABILITY UNDER THIS AGREEMENT, REGARDLESS OF THEORY OF LIABILITY, SHALL BE LIMITED TO TEN THOUSAND DOLLARS (\$10,000.00).

Conditions for Breach: We will not be deemed to be in violation of this Agreement unless you have first have given us written notice specifying the nature of the default, and we have failed within thirty (30) days of receipt of the notice either to cure the default or, if cure within such period is not practicable, to be diligently proceeding to cure the default.

In the event Licensee fails to comply with the CureMD implementation, training and policy guidelines, including but not limited to installation of compliant hardware, bandwidth or infrastructure, HIPAA, HITECH, and other federal / state laws, or as a result of inactivity fails to respond to any communication for a period of six (6) months after signing up, the Licensee shall be considered dormant and automatically released from this Agreement. Any payment deposits, up-front or recurring, shall be forfeited accordingly and CureMD will not be held liable for any loss or damage suffered by the Licensee. Thereafter, if the Licensee wishes to resume our services, they will have to renew their Agreement with CureMD, subject to additional charges.

23) Data Protection: The Licensee agrees that it will establish procedures for handling and protecting patient data consistent with good data management for important and sensitive data, including but not limited to measures such as:

- i. Implementation of physical and electronic security measures to prevent unauthorized persons from having access to the Programs;
- ii. Use of a continuously active computer virus detection and deletion program on the System, upgraded regularly, together with procedures to ensure that all data or files that are loaded into the System are checked for viruses prior to use;
- iii. Ensure that all Authorized Users are trained in proper security and data protection procedures, such as alertness to evidence of unauthorized access, avoidance of use of modems for Internet access, and avoidance of use of diskettes that have not been checked for viruses.

24) Assignment: The Licensee's rights, duties and obligations under this Agreement may not be, directly or indirectly, transferred, leased, assigned, delegated, sublicensed or otherwise conveyed or disposed of, nor may the Licensee undergo a change of ownership or control (in each case, "a Transfer") without the prior written consent of CureMD, which may be withheld in CureMD's sole and absolute discretion; provided, however, that CureMD shall not unreasonably withhold its consent to a Transfer that involves the sale by the Licensee of all of its assets, or a merger of the Licensee into another Person, so long as, prior to such Transfer, the transferee: Provides CureMD with such information as CureMD may reasonably request and such information is satisfactory to CureMD; Assumes all obligations of the Licensee to CureMD under this Agreement or otherwise; and Pays to CureMD, CureMD's re- license fee. No Transfer shall relieve the Licensee of any of its obligations, whether under this Agreement or otherwise. Any purported Transfer by the Licensee in violation of this Section 24 shall be null and void. CureMD may assign its rights and delegate obligations under this Agreement without the consent of the

Licensee subject to the foregoing; this Agreement shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns.

25) Protection of Proprietary Rights & Confidential Information: The Licensee acknowledges that the CureMD Information, the CureMD Materials and other Related technical and business information and documentation (altogether the "Proprietary Information") provided to the Licensee by or on behalf of CureMD or an authorized CureMD reseller classify as confidential information and are valuable proprietary rights of CureMD or its licensors, including ideas, concepts and techniques contained in the Programs, reference data, system design, data models, product performance and functionality, planned products and services, marketing and product plans, processes, formulas, and methodologies for developing, analyzing and presenting data, and the terms and conditions of this Agreement, as it may be amended from time to time, and any other agreements between CureMD and the Licensee. The Licensee agrees not to (i) Provide or otherwise make available what's outlined above or any CureMD Information, CureMD Material, any backup copies of Programs if permitted to be made under this Agreement, or other documentation of CureMD in any form to any person, corporation or entity, (ii) Disclose Proprietary Information to any person, corporation or entity, including preparation and provision to any third party, or allowing any third party access to the Programs to prepare any benchmark analysis of the performance of the Programs or comparison of the Programs or the Optional Services with the products or services of any other party or (iii) remove or obscure any copyright and trademark notices or other proprietary notices relating to licensed software. The Licensee shall exercise the same level of care to protect the proprietary nature of CureMD Proprietary Information as it exercises to protect its own proprietary and confidential information and shall, in addition, take such actions as are required under this Agreement or shall be reasonably specified by CureMD in a written notice to the Licensee hereafter for such purpose.

Licensee agrees that the Confidential Information is to be considered confidential and proprietary to CureMD and Licensee shall hold the same in confidence, shall not use the Confidential Information other than for the purposes of its business with CureMD, and shall disclose it only to its officers, directors, or employees with a specific need to know, who will then be bound to the same effect as the Licensee under the terms of this agreement to the extent of (or in reference to) the Confidential Information so disclosed. Licensee will not disclose, publish or otherwise reveal any of the Confidential Information received from CureMD to any other party whatsoever except with the specific prior written authorization of CureMD.

Confidential Information furnished in tangible form shall not be duplicated by Licensee except for purposes of this Agreement. Upon the request of CureMD, Licensee shall return all Confidential Information received in written or tangible form, including copies, or reproductions or other media containing such Confidential Information, within ten (10) days of such request.

At Licensee's option, any documents or other media developed by the Licensee containing Confidential Information may be destroyed by Licensee. If the Licensee chooses not to destroy any such documents or other media containing Confidential Information, it must, however, essentially remove any part there of containing references to the Confidential Information mentioned therein. Licensee shall provide a written certificate to CureMD regarding destruction within ten (10) days thereafter.

Nothing contained herein shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information. It is understood and agreed that neither party solicits any change in the organization, business practice, service or products of the other party, and that the disclosure of

Confidential Information shall not be construed as evidencing any intent by a party to purchase any products or services of the other party nor as an encouragement to expend funds in development or research efforts. Confidential Information may pertain to prospective or unannounced products. Licensee agrees not to use any Confidential Information as a basis upon which to develop or have a third party develop a competing or similar product/service.

Licensee may disclose Confidential Information as required to satisfy any legal requirement of a competent government body provided that, immediately upon receiving any such request and to the extent that it may legally do so, Licensee advises CureMD the request prior to making such disclosure in order that CureMD may interpose an objection to such disclosure or take such other action as it deems appropriate to protect the Confidential Information. Each party's Confidential Information shall remain the property of that party. Nothing contained in this section shall be construed as obligating a party to disclose its Confidential Information to the other party or as granting to or conferring upon a party, expressly or impliedly, any rights or license to the Confidential Information of the other party.

Licensee agrees that CureMD will suffer irreparable harm if Licensee fails to comply with its obligations set forth in this Section 25 including other obligations set forth in this Agreement pertaining to CureMD's intellectual property rights (which shall survive the termination or expiration of this Agreement, regardless of the cause of termination), and you further agree that monetary damages will be inadequate to compensate us for any such breach. Accordingly, you agree that we will, in addition to any other remedies available to us at law or in equity, be entitled to the issuance of injunctive relief to enforce the provisions hereof as well as seek specific performance, immediately and without the necessity of posting a bond.

26) Scope of Agreement: This Agreement is the exclusive agreement between the Licensee and CureMD, with respect to the Programs and Services and the subject matter of this Agreement and, as of its Effective Date supersedes all prior and contemporaneous agreements, negotiations, representations and proposals, written or oral, related to its subject matter. CureMD shall not be bound by or liable to the Licensee for any representation, promise or inducement made by any agent of CureMD or any other Person, which is not embodied in this Agreement or in another writing signed by CureMD. CureMD shall have no obligation under this Agreement in the event that the representations and warranties of the Licensee set forth in this Agreement are untrue in any material respect.

27) Governing Law: This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of North Carolina as it applies to a contract made and to be performed in such state.

28) Modifications and Waivers: This Agreement may not be modified except by a writing signed by authorized representatives of both parties. A waiver by any party of its rights under this Agreement shall not be binding unless contained in a writing signed by an authorized representative of the party waiving its rights. The non-enforcement or waiver of any provision on any occasion shall not constitute a waiver of such provision on any other occasions unless expressly so agreed in writing. It is agreed that no usage of trade or other regular practice or method of dealing between or among the parties to this Agreement shall be used to modify, interpret, supplement, or alter in any manner the terms of this Agreement.

29) Dispute Resolution:

Negotiation and Mediation: Prior to the initiation of any litigation, should a dispute arise between the parties as to the interpretation or the legal effects of the Agreement, the parties shall first seek to resolve such dispute through negotiations. If such negotiations do not succeed within fifteen (15) working days, or a different period agreed by the parties, each of the parties may request that the dispute be submitted for mediation to be conducted in pursuant to Section 7A-38.1 of the North Carolina General Statutes.

30) Enforceability/Injunctive Relief: It is understood and agreed by the parties to this Agreement that it is their intention that if a court of competent jurisdiction shall determine that any of the terms of this Agreement are invalid or otherwise unenforceable, that such court shall substitute terms, therefore, with such court determines are enforceable, so as to result in the enforcement of the original terms to the maximum extent permitted by law.

The Licensee agrees that any non-compliance with the terms of this Agreement, or any unauthorized or improper use of any CureMD trademarks or CureMD Materials will cause irreparable damage to CureMD. The Licensee therefore agrees that if the Licensee engages in any one or more of such noncompliance, unauthorized use and improper use of CureMD trademarks or CureMD Materials, during or after the Term of License, CureMD shall be entitled to both temporary and permanent injunctive relief against the Licensee from any court of competent jurisdiction, in addition to all other remedies which CureMD may have at law, in equity or otherwise.

31) Marketing: The Licensee agrees that during the term of this Agreement CureMD may publicly refer to the Licensee, orally and in writing, as a Customer of CureMD and may also use Licensee's trademark or logo for this purpose. Any other reference to Customer by CureMD requires the written consent of Customer.

32) Notices: Unless otherwise provided, any notice required or permitted under this Agreement shall be given in writing and shall be deemed effectively given upon personal delivery to the party to be notified or on the fifth (5th) day following deposit with the United States Post Office, by registered or certified mail (return receipt requested), postage prepaid and addressed to the party to be notified at the address of such party set forth in this Agreement, or at such other address as such party may designate by ten (10) days advance written notice to the other party.

33) No Third Party Beneficiaries: Nothing express or implied in this Agreement is intended to confer, nor shall confer, upon any person or entity other than the parties, their licensors, and their respective successors or assigns any rights, remedies, obligations, or liabilities whatsoever.

34) Non Solicitation: Each party to this Agreement agrees not to recruit or hire any employee or agent of the other party, either as an employee or consultant, or recruit any such person for another company, while such person is employed or retained by the other party and for a period of twelve (12)

months after the employee leaves the employ of the other party, or for a period of twelve (12) months after the termination or expiration of this Agreement, whichever period ends at the latest date.

35) Advice of Counsel & Authority: Each Party acknowledges: (a) having fully read this Agreement in its entirety; (b) having had full opportunity to study and review this Agreement; (c) having been advised that counsel for us has acted solely on our behalf in connection with the negotiation, preparation, and execution of this Agreement; (d) having been advised that all parties have the right to consult and should consult independent counsel respecting their rights and duties under this Agreement; and (e) having had access to all such information as has been requested.

The individuals, corporations or entities entering into this Agreement represent and warrant that they are competent and capable of entering into a binding contract, and that they are authorized to enter into this Agreement on behalf of the Parties.

36) Interpretation: Section headings are for reference only, and shall not be construed as substantive parts of this Agreement. Each capitalized term used in this Agreement (including any schedule or exhibit of this Agreement) shall have the meaning attributed to it in any part of this Agreement (including any such schedules or exhibits).

In the event that CureMD is entitled to make any decision or determination, or grant or withhold any consent or approval, pursuant to any term of this Agreement, it shall be entitled to do so in its sole and absolute discretion. Each use of the term including, in this Agreement, unless otherwise expressly stated in connection with such use, shall mean including without limitation.

37) Survival & Period of Claims: Licensee acknowledges and agrees that the covenants and agreements made in this Agreement are made for the benefit of CureMD and its Licensors and the obligations existing prior to the termination or expiration hereof shall survive the termination or expiration of this Agreement. Other than that all indemnification, confidentiality, intellectual property, non-compete, non-solicitation, governing law, dispute resolution, enforceability/injunctive relief, Limitation of Liability, Disclaimer and other clauses including those provisions which by their terms contemplate survival shall survive the termination or expiration of this Agreement regardless of the cause of such termination. In the event of any breach by Licensee of the terms of this Agreement, in addition to other relief to which CureMD shall be entitled, CureMD shall be entitled to terminate this License.

No action, regardless of form, relating, directly or indirectly to this Agreement or the Programs or Services or other goods or services rendered may be brought more than one three (3) years after cause of action has arisen. This limitation however, shall not be applicable to CureMD intellectual property as well as indemnification rights. If any claim or cause of action is not filed within said three (3) year time period, the claim or cause of action shall be forever barred.

Insurance: You will obtain and maintain such policies of, general liability, errors and omissions, and professional liability insurance with reputable insurance companies as is usually carried by persons engaged in your business covering the Term of this Agreement. Such insurance shall be in amounts no less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the annual aggregate.

Furthermore, to the extent allowed by law, you will hold CureMD harmless from all claims, demands and suits arising out of the performance of your obligations hereunder or for any other damages to you, CureMD or any third party that could have been covered by obtaining proper insurance.

38) **Force Majeure:** Neither party shall be liable to the other party for damages or losses, except for payment obligations, on account of failure of performance by the defaulting party if the failure is the result of an Act of God (e.g., fire, flood, inclement weather, epidemic, or earthquake), fear, possibility, war or act of terrorism, including chemical or biological warfare; labor dispute, lockout, strike, embargo; communication line, hardware or power failures; governmental acts, orders, or restrictions; failure of suppliers or third persons; nuclear or other civil or military emergencies; acts of legislative, judicial, executive, or administrative authorities; or any other reason where failure to perform is beyond the reasonable control, and is not caused by the negligence, intentional conduct or misconduct of the defaulting party, and the defaulting party has exercised all reasonable efforts to avoid or remedy such force majeure. The defaulting party must provide written notice of the force majeure event to the remaining parties within two (2) business days of such event.

39) **Misuse of Third Party Product:** You agree that You will use Third Party Products only in accordance with the permitted or licensed use of such Third Party Products and You agree to defend, indemnify and hold CureMD, its affiliates, resellers and licensors as well as their respective employees, officers, or contractors harmless from any claim by or on behalf of any third party which is brought against CureMD, its affiliates, resellers and licensors as well as their employees, officers, or directors arising out of any improper use of any third Party Product or any infringement of any third party's rights with respect to your use, copying, modification, distribution, display or other activity relating to any Third Party Product unless such activity is licensed to You under this Agreement with respect to the applicable Third Party Product.

40) **Additional Services:** The following table lists the terms and conditions of the Business Associate Agreement and the Additional Services provided by CureMD. By using the Programs and Services, you agree to the Business Associate Agreement and to the terms and conditions of the Additional Services used by you.

CureMD Services – Terms and Conditions
<u>Business Associate Agreement</u>
<u>CureBilling</u>
<u>Cure Confirm</u>
<u>E-Faxing Services</u>
<u>Medical Transcription Services</u>
<u>Equipment Rental Agreement</u>

41. CureMD utilizes Carolinas IT services for hosting data. CureMD assumes responsibility for securing and backing up Licensee's data, and making Licensee's data accessible to the Licensee. All invoices with respect to data hosting will be paid directly to CureMD in accordance with this Agreement.



BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (hereinafter referred to as "the Agreement") is being made and entered into by and between Licensee ("Covered Entity") and CureMD.com, Inc. ("Business Associate") and will be read as an integral party of the License and Services Agreement ("EULA") (Both Covered Entity and Business Associate would also be referred as "Party" individually and collectively as "Parties" herein below)

RECITALS

WHEREAS, Covered Entity and Business Associate are Parties to the EULA pursuant to which Business Associate provides certain services to Covered Entity. While providing services, Business Associate creates or receives Protected Health Information from or on behalf of Covered Entity, which information is subject to protection under Federal Health Insurance Portability and Accountability Act of 1996 (hereinafter "HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009 (hereinafter "HITECH Act"), and related regulations promulgated by the Secretary (hereinafter "HIPAA Regulations");

WHEREAS, in light of the foregoing and the requirements under HIPAA, the HITECH Act and the HIPAA Regulations, both parties are hereby bound by the terms and obligations provided herein below;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS:

- a. General: Terms used, but not otherwise defined, in this Agreement shall have the same meaning given to those terms by HIPAA, the HITECH Act and HIPAA Regulations as in effect or as amended from time to time.
- b. Specific:
 - i. Breach shall have the same meaning as per the term 'breach' enshrined under the HITECH Act, Section 13400(1).
 - ii. Electronic Health Record shall have the same meaning as per the term 'electronic health record' enshrined under the HITECH Act, Section 13400(5).
 - iii. Electronic Protected Health Information shall have the same meaning as per the term 'electronic protected health information' provided under 45 CFR § 160.103, limited to the information that Business Associate creates, receives, maintains or transmits for or on behalf of Covered Entity.
 - iv. Individual shall have the same meaning as per the term 'individual' given under 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
 - v. Privacy Rule shall have the same meaning the Standards of Privacy of Individually Identifiable Health Information at 45 CFR Part 160, Part 162 and Part 164.



- vi. Protected Health Information shall have the same meaning as per the term 'protected health information' provided under 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity. Notwithstanding the foregoing, Protected Health Information shall include such information that is included in 'Data' created or received by Business Associate as such term may be defined under any Services Agreement.
- vii. Designated Record Set shall mean those records maintained by Business Associate, including the medical and billing records about Individuals, in addition to any enrollment, payment, claims adjudication and case or medical management record systems.
- viii. Required by Law shall have the same meaning as per the term 'required by law' in 45 CFR § 164.103.
- ix. Secretary shall mean the Secretary of the Department of Health and Human Services or his designee.
- x. Security Rule shall mean the Security Standards at 45 CFR Part 160 and Part 164.
- xi. Services Agreement shall mean (i) any present or future agreements, either written or oral, between Covered Entity and Business Associate under which Business Associate provides services to Covered Entity which involve the use or disclosure of Protected Health Information, and (ii) certain Services Agreement executed between the Covered Entity and Business Associate. The Services Agreement is amended by and incorporates the terms of this Agreement and subsequently this Agreement is deemed an integral part thereof.
- xii. Unsecured Protected Health Information shall have the same meaning as per the term provided in the HITECH Act, Section 13402(h)(1).

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a. Use and Disclosure: Business Associate agrees not to use or disclose Protected Health Information (hereinafter "PHI") other than as permitted or required by the Services Agreement, this Agreement or as required by Law.
- b. Appropriate Safeguards: Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of the PHI other than as provided for by this Agreement. Without limiting the generality of the aforementioned, Business Associate shall:
 - i. Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic Protected Health Information as required by the Security Rule;



- ii. Ensure that any agent, including a subcontractor, to whom Business Associate provides Electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect Electronic Protected Health Information;
 - iii. Promptly report to Covered Entity regarding any Security Incident of which Business Associate becomes aware. In addition, Business Associate agrees to notify Covered Entity without unreasonable delay and in no event more than 50 days following the discovery of a Breach of Unsecured Protected Health Information. A Breach shall be considered as 'discovered' on the first day the Breach is known, or reasonably ought to have been known, to Business Associate or any of its employees, officers or agents, other than the individual committing the Breach. Any notice of a Security Incident or Breach of Unsecured Protected Health Information shall include the identification of each individual whose PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired, or disclosed during such Security Incident or Breach as well as any other relevant information regarding the Security Incident or Breach, provided that any such reports or notices shall be subject to the prior written approval of the Covered Entity.
- c. **Reporting:** Business Associate agrees to promptly report to Covered Entity any use or disclosure of PHI not permitted by this Agreement, by the Law or by the Services Agreements of which Business Associate becomes aware.
- d. **Mitigation:** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its employees, officers or agents in violation of the requirements of this Agreement (including, without limitation, any Security Incident or Breach of Unsecured Protected Health Information). Business Associate agrees to reasonably cooperate and coordinate with Covered Entity in the investigation of any violation of the requirements of this Agreement and / or any Security Incident or Breach. Business Associate shall also reasonably cooperate and coordinate with Covered Entity in the preparation of any notices or reports to the Individual, a regulatory body or any third party required to be made under HIPAA, the HIPAA Regulations, the HITECH Act, or any other Federal or State Laws, rules or regulations.
- e. **Agents and Subcontractors:** Business Associate shall ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- f. **Access to Designated Record Sets:** To the extent that Business Associate possesses or maintains PHI in Designated Record Sets, Business Associate agrees to provide access to such Designated Record Sets at the request of Covered Entity, and in the time and manner reasonably designated by Covered Entity, to an Individual in order to comply with the requirements given under the HIPAA Regulations. If an Individual makes a request for access to PHI directly to Business Associate, it shall notify Covered Entity within three (3) business days of such a request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual.



- g. Amendments to Designated Record Sets: To the extent that Business Associate possesses or maintains PHI in Designated Record Sets, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to HIPAA Regulations at the request of Covered Entity or an Individual, and in the time and manner reasonably designated by Covered Entity. If an Individual makes a request for an amendment to PHI directly to Business Associate, it shall notify Covered Entity within ten (10) business days of such a request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual.
 - h. Access to Books and Records: Business Associate agrees to make its internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate, on behalf of Covered Entity, available to the Covered Entity, or to the Secretary in the time and manner designated by the Covered Entity or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
 - i. Accounting: Business Associate agrees to document such disclosures of PHI and information pertaining to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with HIPAA, HIPAA Regulations and the HITECH Act, as of its effective date.
 - j. Requests for Accounting: Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner designated by the Covered Entity, information collected in accordance with Clause 2(i) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with HIPAA, HIPAA Regulations and the HITECH Act, as of its effective date. If an Individual makes a request for an accounting directly from the Business Associate, it shall notify Covered Entity of the request within ten (10) business days of such request and will cooperate with Covered Entity to send the response to the Individual.
 - k. Forwarding Individual's Requests: If forwarding the individual's request for access to, amendment of, or accounting of PHI to Covered Entity would cause the Business Associate to violate the HIPAA, HIPAA Regulations or the HITECH Act, the Business Associate shall instead respond to the individual's request as required by such law and notify the Covered Entity of such a response as soon as practicable.
3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE
- a. Services Agreement: Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for or on behalf of, Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate HIPAA, HIPAA Regulations or the HITECH Act as of its effective date if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
 - b. Use for Administration of Business Associate: Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.



- c. Disclosure for Administration of Business Associate: Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI for the proper management of Business Associate, provided that (a) disclosures are required by Law, or (b) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 - d. Permissible requests by Covered Entity: Except as set forth in this Clause 3 of this Agreement, Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.
4. OBLIGATIONS OF COVERED ENTITY.
- a. Notice of Privacy Practices: Covered Entity agrees to provide individuals with notice of its privacy practices and obtain acknowledgment of receipt thereof in compliance with 45 C.F.R. § 164.520. In addition, upon request Covered Entity shall promptly provide Business Associate with a copy of its privacy practices in accordance with 45 C.F.R. § 164.520, as well as any modifications thereto.
 - b. Changes In or Revocation of Permission by Individuals: Covered Entity shall promptly notify Business Associate, in writing, of any changes in, or revocation of, an individual's permission to use or disclose PHI, if such changes or revocation affects Business Associate's permitted or required uses and disclosures.
 - c. Covered Entity's Agreements to Restrict Use or Disclosure: In the event Covered Entity agrees to restrict the use and/or disclosure of PHI in accordance with 45 C.F.R. § 164.522, it shall promptly notify Business Associate, in writing, of the nature and extent of said restriction.. The Covered Entity shall notify the Business Associate of any restrictions that the Covered Entity may have entered into prior to the execution of this Agreement
 - d. Permissible Requests by Covered Entity: Covered Entity shall not request Business Associate to use or disclose protected health information in any manner that would not be permissible under HIPAA or other applicable law or regulation governing the privacy of PHI.
 - e. Consents and Authorizations: Covered Entity represents and warrants that any and all consents, authorizations, or other permissions required by HIPAA or other applicable law (including state law) necessary to allow Business Associate to perform the administrative functions, services, or activities on behalf of Covered Entity consistent with this Agreement have been properly secured.



- f. Third Party Access: By granting access to third parties outside the United States of America access to the Business Associate's products or services, the Covered Entity accepts and agrees to the Business Associate's Release Agreement for Third Party Access.

5. TERM AND TERMINATION

- a. Term: This Agreement shall be effective as of the date mentioned on this Agreement and shall terminate when all underlying agreements between the parties terminate and the parties cease to have an ongoing business relationship.
- b. Termination for Cause:
 - a. In the event a party fails to perform the obligations under this Agreement (the "Breaching Party"), the non-breaching party may, at its option:
 - i. Require the Breaching Party to submit to a plan of compliance, including monitoring by Non-Breaching Party and reporting by the Breaching Party, as the Non-Breaching Party, in its sole discretion, determines necessary to maintain compliance with this Agreement and applicable law. Such plan shall be incorporated into this Agreement by amendment hereto; and
 - ii. In case of breach by the Business Associate, immediately discontinue providing PHI to Business Associate with or without written notice to Business Associate.
 - iii. Furthermore, the Non-Breaching Party may immediately terminate this Agreement and related agreements if the Non-Breaching Party determines that Breaching Party has breached a material term of this Agreement.
 - iv. Alternatively, Non-Breaching Party may choose to (i) provide Breaching Party with ten (10) days written notice of the existence of an alleged material breach; and (ii) afford Breaching Party an opportunity to cure said alleged material breach to the satisfaction of Non-Breaching Party within (10) days. Breaching Party's failure to cure shall be grounds for immediate termination of this agreement. Non-Breaching Party's remedies under this Agreement are cumulative, and the exercise of any remedy shall not preclude the exercise of any other.
- c. Effect of Termination:
 - i. Except as provided in Clause 5(c)(ii), upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall not retain any copies of PHI whatsoever.
 - ii. Notwithstanding the foregoing, in the event that Business Associate reasonably determines that returning or destroying the PHI is not feasible, Business Associate shall provide Covered Entity a notification of the conditions that make the return or destruction infeasible, and Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those



purposes that make the return and destruction infeasible, for as long as Business Associate maintains such PHI.

6. COMPLIANCE WITH HIPAA STANDARDS

To the extent applicable when providing its services and/or products, Business Associate shall comply with all HIPAA Standards and requirements (including, without limitation, those specified in 45 CFR Part 162) with respect to the transmission of health information in electronic form in connection with any transaction for which the Secretary has adopted a standard under HIPAA ("Covered Transactions"). Business Associate will make its services and/or products compliant with HIPAA's Standards and requirements no less than thirty (30) days prior to the applicable compliance dates under HIPAA. Business Associate represents and warrants that it is aware of all current HIPAA Standards regarding Covered Transactions, and Business Associate shall comply with any modifications to HIPAA Standards which become effective from time to time. Business Associate agrees that such compliance shall be at its sole cost and expense, which expense shall not be passed on to Covered Entity in any form, including but not limited to, increased fees. Business Associate shall require all of its agents and subcontractors (if any) who assist in providing its services and/or products to comply with the terms provided herein.

7. MISCELLANEOUS

- a. Assignment of Rights and Delegation of Duties: This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns. However, neither Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Assignments made in violation of this provision are null and void.
- b. Regulatory References: A reference in this Agreement to a Clause in HIPAA, HIPAA Regulations or the HITECH Act means the section as in effect or as amended from time to time, for which compliance is required.
- c. Amendment: The Parties agree to take such action as is necessary to amend the Services Agreement from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA, the HIPAA Regulations and the HITECH Act.
- d. Survival: The respective rights and obligations of Business Associate as per Clause 5(c) of this Agreement shall survive the termination of the Services Agreement or this Agreement.
- e. Interpretation: Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with HIPAA, HIPAA Regulations and the HITECH Act.
- f. Indemnification: Covered Entity shall, to the fullest extent permitted by law, protect, defend, indemnify and hold harmless Business Associate and its respective employees, directors, and agents from and against any and all losses, costs, claims, penalties, fines, demands, liabilities, legal actions, judgments, and expenses of every kind (including reasonable attorney's fees, including at trial and on appeal) asserted or imposed against the Business Associate arising out of the acts or omissions of Covered Entity or any of its




employees, directors, or agents related to the performance or nonperformance of this Agreement. Business Associate shall, to the fullest extent permitted by law, protect, defend, indemnify and hold harmless Covered Entity and its respective employees, directors, and agents from and against any and all losses, costs, claims, penalties, fines, demands, liabilities, legal actions, judgments, and expenses of every kind (including reasonable attorney's fees, including at trial and on appeal) asserted or imposed against the Covered Entity arising out of the acts or omissions of Business Associate or any of its employees, directors, or agents related to the performance or nonperformance of this Agreement.

- g. Severability: The provisions of this Agreement shall be severable, and if any provision of this Agreement shall be held or declared to be illegal, invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect as though such illegal, invalid or unenforceable provision had not been contained herein.

- h. Miscellaneous: The terms of this Agreement are hereby incorporated into the Services Agreement. In the event of a conflict between the terms of this Agreement and the Services Agreement, the terms of this Agreement shall prevail as it pertains to the subject matter herein. This Agreement shall be governed by, and construed in accordance with the laws of the State of North Carolina, exclusive of conflict of law rules. Each party to this Agreement hereby agrees and consents that any legal action or proceeding with respect to this Agreement shall only be brought in the General Courts of Justice of the State of North Carolina. The Services Agreement together with this Agreement constitutes the entire agreement between the parties with respect to the subject matter contained herein, and this Agreement supersedes and replaces any former Business Associate Agreement or Addendum entered into by the Parties. No modifications or amendments to this Agreement shall be deemed effective unless executed by both Parties in writing.

 Client Name: Northampton County Health Department Date: 5/2/2016 Page 1	
CureCloud Proposal	
Software Applications	CureCloud
Practice Management (Scheduling, Registration, Billing)	✓
Electronic Medical Records (Clinical documentation, workflow, specialty content)	✓
Document Management (Document scanning/archiving)	✓
Electronic Prescriptions (Prescription Audit Certified, Remit, Rx History)	✓
Patient Portal (Registration, Appointment Requests, Rx Refills, Lab Results)	✓
CureConnect EDI (eligibility, claims, Electronic Remittance Advice)	✓
Executive Management Reporting (Administrative, Clinical, Financial)	✓
Text-Messages (Provider Alerts, Reminders)	✓
Technical Services	
CureMD Smart Cloud (hosting)	✓
Software Maintenance/Updates/Support	✓
Disaster Recovery/24 x 7 availability	✓
System Implementation Services	
Implementation, Database Configuration, Practice Set-up	✓
EDI Set-up & Provider Enrollment	✓
Online Training package 1 for 1st Provider (20 hrs. online)	✓
Online Training package 2 for each Add'l Provider (20 hrs. online)	✓
Online Training package 3 for each PT/Non-billing Provider (20 hrs. online)	✓
Data Migration, Conversion, Validation	Optional
Standard Monthly Fees (Inclusive of S/W and technical services described above)	
1st Full Time Billing Provider	\$695
Additional FT Billing Providers	\$595
Additional PT and Non-billing Providers	\$495
System Implementation Services Fees	
1st Full Time Billing Provider	\$7,000
Additional FT Billing Providers (each)	\$4,000
Additional PT and Non-billing Providers (each)	\$2,500
Terms & Conditions	
<p>CureCloud offers a complete, all-in-one solution including Cloud hosting, software, EDI, professional services and on-going support.</p> <p>CureCloud: The monthly subscription includes all CureMD software. Each provider will receive a pre-packaged implementation and training program priced on a per provider basis. Each provider must purchase the implementation and training program specifically designed and priced as follows on a per provider basis: \$2000/1st provider, \$4000/each add'l FT billing provider, \$2500/each PT or non-billing provider. This is a 60 month contract. Early termination will result in the payment of \$100 per provider per month for the balance of the original term. At the end of the original term the client may renew the 60 month agreement at the same monthly subscription fee.</p> <p>Optional Services: All one-time and monthly optional services will be billed separately and are not considered part of the core CureCloud Software Solution Suite. Early termination of these services will not result in any penalties.</p> <p>Note: CureCloud is a pre-packaged all-inclusive (software and applicable services) solution offering as described above. Should the client choose to terminate this agreement early, the client will be responsible for honoring the early termination clause as defined above. All subscription fees are to be paid by ACH or automatic credit card EFT authorization. By signing this proposal the client accepts the terms and conditions of the CureMD "End User License & Services" agreement available at http://www.curemd.com/eula.htm</p>	

		Client Name: Northampton County Health Department Date: 5/2/2016		Page 2	
CureCloud Proposal			Investment Summary		
Optional Services		Quantity	Cost	Subtotals	
Additional On-line Training (2-4 sessions - one time fee)		0	\$350.00	\$0.00	
Data Migration, Conversion, Validation		1	\$3,000.00	\$3,000.00	
Discrete Reportable Transcription (Per Minute Charge billed monthly)		0	\$1.40	\$0.00	
Patient Statements (enrich, Printing, Enveloping, Posting billed monthly)		0	\$0.75	\$0.00	
Electronic Fax (actual one-time setup per line)		0	\$325.00	\$0.00	
1.) \$45 monthly - includes 500 pages billed monthly (\$.10/page extra)		0	\$45.00	\$0.00	
2.) \$125 monthly - includes 1500 pages billed monthly (\$.10/page extra)		0	\$125.00	\$0.00	
3.) \$189 monthly - includes 3000 pages billed monthly (\$.09/page extra)		0	\$189.00	\$0.00	
4.) \$450 monthly - includes 7500 pages billed monthly (\$.06/page extra)		0	\$450.00	\$0.00	
Ad Hoc reporting software (annual)		1	\$2,500.00	\$2,500.00	
Database Setup and Configuration (per location one-time fee)		1	\$499.00	\$499.00	
Subscription-based Products & Services		Quantity	Cost	Subtotals	
Monthly Subscriptions					
CureCloud 1st FT Providers		1	\$495.00	\$495.00	
CureCloud Additional FT Providers		0	\$95.00	\$0.00	
CureCloud PT & Non-billing Providers		1	\$295.00	\$295.00	
Ad Hoc reporting monthly maintenance and support (per user)		0	\$89.00	\$0.00	
Implementation and Training Package					
CureCloud 1st FT Providers		1	\$7,000.00	\$7,000.00	
CureCloud Additional FT Providers		0	\$4,000.00	\$0.00	
CureCloud PT & Non-billing Providers		1	\$2,500.00	\$2,500.00	
Additional On-site Training (8-hr daily session - one time fee)		2	\$1,200.00	\$2,400.00	
Totals (Proposal pricing valid for 30 days)				Totals	
Implementation and Training Package Fees				\$11,900.00	
Optional Services One-time Fees				\$5,999.00	
Optional Services Monthly Fees (billed monthly separately)				\$0.00	
Total Initial Investment				\$17,899.00	
Payment: 25% due at contract execution, 25% practice management go live, balance due at clinical go live					
Monthly Subscriptions				\$790.00	
Total On-going Monthly Subscription Fees				\$790.00	
Practice Name: Northampton County Health Dept Telephone: Ext: Address: P.O. Box 635 City: Jackson State: NC Zip: 27845					
Client Authorized Signature			CureMD Authorized Signature		
By: _____ <small>Please Sign Here</small>			By: _____ <small>Please Sign Here</small>		
Name: _____ <small>Please Print Name & Title</small>			Name: _____ <small>Please Print Name & Title</small>		
Date: _____			Date: _____		

This Instrument has been pre-audited in the manner as

Per NC.G.S. 159-28 (a) Reilie A. Edwards
 Finance Officer

Request for Date and Time for a Public Hearing-Hazard Mitigation Plan:

Ms. Kimberly Turner, County Manager, appeared before the Board to request another Public Hearing date and time for the Hazard Mitigation Plan due to legal notice not advertised in the correct time frame.

Chairwoman Greene asked the Clerk, Komita Hendricks, for a date and time. Ms. Hendricks gave the date and time of October 3, 2016 at 10:20 am.

A motion was made by Chester Deloatch and seconded Robert Carter to set the date and time of October 3, 2016 at 10:20 am for a Public Hearing for the Hazard Mitigation Plan. **Question Called: All present voting yes. Motion carried.**

Request for Date and Time for Public Hearing for Abandonment of Roads:

Ms. Kimberly Turner, County Manager, appeared before the Board to request a Public Hearing date and time for Abandonment of Roads.

Chairwoman Greene asked the Clerk, Komita Hendricks, for a date and time. Ms. Hendricks gave the date and time of November 7, 2016 at 10:05 am.

A motion was made by Chester Deloatch and seconded Robert Carter to set the date and time of November 7, 2016 at 10:05 am for a Public Hearing for Abandonment of Roads. **Question Called: All present voting yes. Motion carried.**

Citizens/Board Comments:

Chairwoman Greene called for Citizens Comments.

Mrs. Shirley Kwasikpui appeared before the Board to inquire about Phase 2 of the Cultural and Wellness Center. Mrs. Kwasikpui also reminded the Board of the Annual Halloween Event that is being held October 26, 2016 from 7 pm to 9 pm.

Mr. Tony Burnette appeared before the Board to also inquire about Phase 2 of the Cultural and Wellness Center. Mr. Burnette mentioned the revenue from Pipeline that could possibly be used toward Phase 2 of the Cultural and Wellness Center.

County Manager Kimberly Turner stated that the Cultural and Wellness Center is a top priority of this Board.

Chairwoman Greene called for Board Comments.

None were heard.

A motion was made by Chester Deloatch and seconded by Robert Carter to adjourn. *Question*
Called: All present voting yes. Motion carried.

Komita Hendricks, Recording Secretary
"r.m. 09-19-16"