

CITY OF MARGATE, FLORIDA

RESOLUTION NO. 11-946

A RESOLUTION OF THE CITY OF MARGATE, FLORIDA, APPROVING AGREEMENT WITH ADVANCED DATA PROCESSING, INC. D/B/A INTERMEDIX, FOR EMERGENCY MEDICAL TRANSPORT BILLING AND COLLECTION SERVICES FOR A THREE YEAR PERIOD COMMENCING SEPTEMBER 1, 2011 THROUGH AUGUST 31, 2014; PROVIDING FOR AUTOMATIC RENEWAL.

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BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MARGATE, FLORIDA:

SECTION 1: That the City Commission of the City of Margate, Florida hereby approves agreement with Advanced Data Processing, Inc., D/B/A Intermedix, for emergency medical transport billing and collection services for a three year period commencing September 1, 2011 through August 31, 2014 and providing for two automatically renewable three year periods.

SECTION 2: That the Mayor and City Manager are hereby authorized and directed to execute said Agreement on behalf of the City of Margate, a copy of which is attached and made a part of this Resolution.

SECTION 3: That this Resolution shall become effective immediately upon its passage.

PASSED, ADOPTED AND APPROVED THIS 24<sup>TH</sup> day of AUGUST, 2011.

ATTEST:

Leslie Wallace May  
LESLIE WALLACE MAY  
CITY CLERK

P P  
MAYOR PAM DONOVAN

RECORD OF VOTE

Varsallone	Yes
Talerico	Aye
Peerman	Yes
McLean	Yes
Donovan	Yes

8-24-11  
Commission Meeting

**AGREEMENT BETWEEN  
CITY OF MARGATE  
AND  
ADVANCED DATA PROCESSING, INC.  
FOR AMBULANCE BILLING AND RELATED PROFESSIONAL SERVICES**

THIS AGREEMENT ("Agreement") is made and entered into this 1st day of September, 2011 (the "Effective Date") by and between the City of Margate, a Florida municipal corporation, with principal offices located at 5790 Margate Boulevard, Margate, Florida 33063 ("CITY") and Advanced Data Processing, Inc., a Delaware Corporation, dba Intermedix, with principal offices located at 6451 North Federal Highway, Suite 1002, Fort Lauderdale, Florida 33308 ("Intermedix").

**RECITALS**

WHEREAS, CITY provides emergency and non-emergency medical services, including ambulance transport ("EMS"), for residents and visitors in its jurisdiction, and charges for such services; and

WHEREAS, Intermedix provides billing, collection and related consulting services and equipment for municipalities and other providers of EMS; and

WHEREAS, the parties hereto now wish to enter into an agreement, pursuant to which Intermedix will render the Services as hereinafter provided;

NOW THEREFORE, the parties hereto agree as follows:

**AGREEMENT**

**1. ENGAGEMENT OF INTERMEDIX.** During the Term of this Agreement, except for accounts referred to a collection agency as provided herein, Intermedix shall be exclusively responsible for the billing and collection of all charges and fees resulting from the delivery of EMS by CITY, including but not limited to all charges and fees to private insurers, Medicare, Medicaid, other governmental programs, individual patients and their responsible parties (collectively, "Payors").

**2. SCOPE OF SERVICES.** Intermedix shall perform and carry out Services as specifically described in Exhibit A (the "Scope of Services"; collectively the Scope of Services and the SaaS Service (as defined in Section 3.01) are the "Services"), which is attached hereto and incorporated herein by this reference. CITY reserves the right to request changes in the Scope of Services within Intermedix's capabilities, which changes shall be implemented upon mutual written agreement of the parties specifying such changes and any change in compensation attributable thereto.

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

**3.01 Right to Use.** Subject to the terms and conditions of this Agreement, during the Term of this Agreement, Intermedix hereby grants to CITY a limited, non-transferable, non-assignable right to access and use the following, without the right to sublicense: (i) Intermedix's proprietary billing system software (the "SaaS Service") as part of the Services provided hereunder, via Internet connection solely in support of the billing and collection with respect to the CITY's EMS services; and (ii) any associated end-user documentation provided by Intermedix (the "Documentation") in support of CITY's authorized access and use of the SaaS Service.

**3.02 User Restrictions.** CITY shall not, and shall not permit others to, without the express written consent of Intermedix: (i) use, receive, reproduce, copy, market, sell, distribute, license, sublicense, lease, timeshare, or rent the SaaS Service, any other Service or any component thereof; (ii) modify, alter, translate or prepare derivative works based on the SaaS Service or Documentation is permitted; (iii) disassemble, decompile, decrypt or reverse engineer the SaaS Service or in any way attempt to discover or reproduce source code for the SaaS Service, or any portion thereof; or (iv) develop or license any third party programs, applications, tools or other products which interface or interact with the SaaS Service. CITY agrees not to remove the copyright, trade secret or other proprietary protection legends or notices which appear on or in the SaaS Service, any other Service or the Documentation. All materials pursuant to this paragraph should be marked or designated as confidential and must meet the definition of trade secret as defined in Florida Statute 812.081.

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

**3.04 Internet Access.** CITY shall be responsible for providing its own Internet access necessary to provide the SaaS Service, and in no event shall CITY be provided with direct access (by modem or otherwise) to the SaaS Service server, other than access that is available to third parties generally through the Internet. The parties acknowledge that, since the Internet is neither owned nor controlled by any one entity, Intermedix makes no guarantee that any given user will be able to access the SaaS Services at any given time. There are no assurances that access will be available at all times and uninterrupted, and Intermedix shall not be liable to CITY for its inability to access the SaaS Service.

**3.05 Limitation of Access to SaaS Service.** CITY's right to access and use the SaaS Service will vary depending upon the scope of the Services being provided by Intermedix. By way of example, if Intermedix is responsible for inputting CITY's data, CITY's access to the SaaS Service will not include the ability to input, delete, or otherwise change such data. Moreover, access to data shall be limited to the employees, representatives and agents of Intermedix and the authorized Users (as defined below) of

CITY. A complete and signed access form for each of CITY's Users authorized to access the SaaS Services must be submitted to and approved by Intermedix. "User" means with respect to the SaaS Service or any other Intermedix product identified in an Exhibit: (i) any employee of CITY or (ii) any medical professional who is authorized to perform medical services for CITY within the applicable CITY territory or jurisdiction as of the Effective Date. CITY shall not permit the access or use of the SaaS Service by a third party, other than CITY's Users who have complied with the terms and conditions of this Agreement, whether to provide services for CITY or otherwise, without Intermedix's prior written consent.

**3.06 Reporting.** Operational and financial data reports for CITY will be available on the SaaS Services when the SaaS Service is available. The format and content of the data will be established and defined by Intermedix and such reports may be added, modified or deleted without notice to CITY. All reporting will be in compliance with all applicable federal and state regulations and laws and will generally be provided as part of the maintenance provision of the Product without additional cost to the CITY. Notwithstanding the foregoing, CITY may request that specific, custom reports be made available to it at an additional charge to be negotiated between Intermedix and CITY.

**3.07 Acknowledgement with Respect to Reports.** With respect to each report generated for CITY as part of the SaaS Service, CITY acknowledges and agrees: (i) such report represents a "snapshot" of a moment in time, and as such, the snapshot may not be accurate with respect to financial results on the whole; (ii) the underlying data may be subject to correction from time-to-time, which may change the results of the report or its interpretation; and (iii) the data represented in the report constitutes only a limited portion of all data available regarding CITY's business. Accordingly, any particular report may not accurately represent the CITY's then-current or future financial condition.

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

**3.09 Intellectual Property.** CITY agrees that the equipment, computer hardware and software, billing and collection processing, Services, SaaS Service and other related systems and equipment are the property and trade secrets of Intermedix, and that CITY will not release any information regarding such Confidential Information (as such term is defined in Section 11.01) and/or trade secrets of Intermedix to any third party without the prior written consent of Intermedix. All materials pursuant to this paragraph should be marked or designated as confidential and must meet the definition of

trade secret as defined in Florida Statute 812.081. CITY further agrees that, in connection with the use of certain data entry devices, CITY may gain access to the intellectual property of third parties. CITY understands and agrees that it may be required to enter into agreements with respect to such intellectual property in order to use such equipment. CITY agrees to enter into such arrangements at Intermedix's request.

**3.10 Audit Rights.** From time to time and upon reasonable prior written notice, Intermedix may audit CITY's use of the Services to help ensure that CITY is in compliance with the terms and conditions of this Agreement, including, but not limited to, any payment terms. Any such audit will be conducted during regular business hours at the applicable facilities of CITY. CITY will identify and cooperate with Intermedix (or its representatives) to provide Intermedix (or its representatives) with reasonable access to all relevant equipment, personnel and records.

#### **4. CITY RESPONSIBILITY.**

**4.01 Generally.** CITY is responsible for all activity occurring under its User accounts and shall abide by all applicable laws and regulations in connection with its use of the SaaS Service. CITY will immediately (and in no greater than twenty four (24) hours from CITY's knowledge of the following) notify Intermedix and use best efforts to cease any further of the following: (i) any unauthorized use of a password or account or any other known or suspected breach of security; (ii) any copying or distribution of any content or other intellectual property of Intermedix related to the Services that is known or suspected by CITY or its Users; (iii) any use of false identity information to gain access to or use the SaaS Service or (iv) any loss or theft of a hardware device on which a User has access to the SaaS Service (each of subsections (i) through (iv) a "Security Breach Event"). To the extent that any Security Breach Event involves Protected Health Information (as defined below), and is subject to the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936), including the privacy and security rules promulgated thereunder ("HIPAA"), as amended by the Health Information Technology for Clinical Health Act (Pub. L. No. 111-5, 123 Stat. 115) (the "HITECH Act"), CITY shall comply with all applicable requirements under such laws, including any applicable breach notification requirements (i.e. notifications to affected individuals, the Department of Health and Human Services ("HHS"), and prominent media outlets) (the "HIPAA Notifications") triggered by the Security Breach Event. "Protected Health Information" means Individually Identifiable Health Information (defined at 45 C.F.R. § 164.501), transmitted or maintained in any form or medium, concerning individuals for whom the CITY has performed EMS.

**4.02 Rights Following Notification.** Upon Intermedix's receipt of notification given by the CITY of a Security Breach Event, Intermedix shall have the right to immediately, without notice to CITY, suspend CITY's access to the SaaS Service until such time as the Security Breach Event has been fully resolved, and no longer presents a threat of inappropriate access to: (i) the SaaS Services, (ii) any other intellectual property rights of Intermedix or its affiliates or (iii) the personal data or Protected Health Information gathered by CITY in the performance of EMS by the CITY. To the extent that a Security Breach Event requires CITY to provide HIPAA Notifications, any such

notifications shall not include a reference to Intermedix or any of its affiliates unless such a reference is specifically required by HIPAA or other applicable law. Further, if CITY intends to reference Intermedix in a HIPAA Notification based on its belief that such a reference is required by HIPAA or other applicable law, CITY shall provide Intermedix written notice of its intent to do so no later than ten (10) days prior to CITY's provision of each required HIPAA Notification (i.e. no later than ten (10) days prior to CITY's provision of notifications to affected individuals, HHS, and/or prominent media outlets, as applicable).

**4.03 Security.** CITY acknowledges that it is solely responsible for providing security software, including without limitation, firewalls and similar applications, to prevent unauthorized access to its computer systems, including malware prevention software on User's computers. CITY is responsible for requiring its Users to use a password to access the SaaS Services in compliance with the SaaS Security Characteristics. The "SaaS Security Characteristics" means a password to access the SaaS Services, which must be at least eight (8) characters in length, and contain three (3) of four (4) of the following characteristics: lowercase letter, uppercase letter, special character or a number. Intermedix shall use commercially reasonable efforts to maintain the security of the SaaS Services, but shall not be responsible for the CITY's loss or dissemination of passwords or other breaches beyond Intermedix's reasonable control. Intermedix provides security software, including without limitation, firewalls and similar applications, to ensure security and prevent unauthorized access for the systems and networks it provides and maintains but cannot be responsible for systems and networks provided and maintained by the CITY.

## **5. COMPENSATION AND METHOD OF PAYMENT.**

**5.01 Fees.** Intermedix shall be paid by CITY a monthly amount representing fees for the Services provided by Intermedix hereunder, computed as follows:

- (a) Six percent (6.0%) of all monies collected by Intermedix for EMS provided by CITY, excluding amounts collected from Medicaid, less refunds ("Net Collections"), plus
- (b) Eleven dollars (\$11.00) per Medicaid account processed, plus
- (c) all amounts set forth in any Addendum attached hereto.

Intermedix reserves the right to increase these fees upon thirty (30) days written notice to CITY if postage is increased by the United States Postal Service, but only in an amount necessary to cover additional postage costs. Such increase shall not require agreement or consent by CITY.

**5.02** Intermedix shall submit the monthly invoices for fees for the Services to City of Margate Fire Rescue, 600 Rock Island Road, Margate, FL 33063 ATTN: City of Margate Fire Rescue, Administration. CITY shall pay the amount invoiced within thirty (30) days of receipt of such invoice. In the event CITY disputes any part of the invoiced amounts, such dispute shall be raised in writing to Intermedix within such thirty (30) day period or the invoice shall conclusively be deemed to be accurate and

correct. Intermedix shall respond to any such notice of dispute within thirty (30) days of receipt thereof. Any overdue amounts which are not the subject of a good faith notice of dispute shall accrue interest at the rate of twelve percent (12%) per annum.

**5.03 Bank Accounts.** CITY agrees that it will be solely responsible for the cost and maintenance of any and all of CITY's bank accounts, lock-box and/or remote deposit services. CITY, should it elect to participate in any credit card acceptance program, agrees to assume and be responsible for all costs associated with such program.

**5.04 Taxes.** All amounts payable under this Agreement are inclusive and CITY shall not be liable for any of same .

## **6. COLLECTION EFFORTS.**

**6.01 Alternative Collection Arrangements.** Intermedix will have the right, on CITY's behalf, in its sole and complete discretion, to enter into an alternative collection arrangement with respect to any patient encounter performed by the CITY if: (i) the total payments are for at least 80 percent of the amount of the bill and the length of the payments do not exceed 18 months; (ii) an insurance company offers at least 70% of the total amount billed with a stipulation that the insured not be billed for the balance; or (iii) Intermedix is able to make arrangements for the payment of patient account that provide a substantially similar economic benefit to CITY, as Intermedix determines in its sole and complete discretion.

**6.02 Scope of Collection Efforts.** If reasonable efforts have been made to collect a patient account of CITY and such efforts have not been successful, Intermedix shall have the right to terminate collection efforts and close the account as an unpaid debt. As used herein "reasonable efforts" shall be defined to mean at least one hundred twenty (120) days of active collection efforts in the ordinary course of business. In addition, Intermedix may terminate or suspend collection efforts in the event that CITY has supplied Intermedix with materially incomplete or inaccurate billing and/or patient information. Absent contrary instructions from CITY with respect to any patient encounter, the accounts that Intermedix has deemed to be uncollectible may be forwarded to a third-party collection agency for further collection effort.

**6.03 Administrative Fee/Third Party Collection Costs.** Intermedix will invoice CITY, and CITY agrees to pay in accordance with the terms and conditions of this Agreement, three percent (3.0%) of collected amounts on accounts sent by Intermedix to the third party collection agency as an administration fee. CITY will be directly liable for all fees of third party collection agency.

**6.04 Excluded Persons.** If any refunds of patient accounts of CITY are required to be refunded to or offset by any government and commercial payor as a result of CITY's violation of its obligations set forth in Exhibit A (Scope of Services), Section B.9. (an "Excluded Person Refund"), Intermedix shall not be required to refund to CITY any commissions or fees earned or previously paid to Intermedix as a result of its

collection of such Excluded Person Refund or otherwise include such Excluded Person Refunds in its calculation of Net Collections as set forth herein.

**7. SYSTEM SUPPORT.** Support and training of CITY's Users will be provided subject to and in accordance with the terms of the Scope of Services.

**8. INDEPENDENT CONTRACTORS.** Intermedix is an independent contractor of CITY and not an employee or agent of CITY; provided, however, to the extent necessary to fulfill its billing and collection efforts under this Agreement, Intermedix is authorized to sign *in an administrative capacity* for CITY the following types of standard forms and correspondence only: probate filings; letters to patients or their representatives verifying that an account is paid in full; forms verifying the tax-exempt status of CITY; and insurance filings and related forms. Intermedix has no authority to sign any document that imposes any additional liability on CITY. Intermedix shall retain full control over the employment, direction, compensation and discharge of all persons assisting in the performance of the Services. Intermedix shall be fully responsible for all matters relating to payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. Each party shall be responsible for its own acts and those of its agents and employees during the Term of this Agreement.

**9. LIMITATION ON LIABILITY.** INTERMEDIX'S TOTAL CUMULATIVE LIABILITY UNDER THIS AGREEMENT WITH RESPECT TO THE SAAS SERVICES, EQUIPMENT OR OTHER SERVICES DELIVERED UNDER THIS AGREEMENT WILL BE LIMITED TO THE TOTAL FEES PAID (LESS ANY REFUNDS OR CREDITS) BY CITY TO INTERMEDIX PURSUANT TO THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. IN NO EVENT WILL INTERMEDIX BE LIABLE TO CITY UNDER, IN CONNECTION WITH, OR RELATED TO THIS AGREEMENT FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, WARRANTY, TORT, PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT INTERMEDIX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE FOREGOING LIMITATIONS OF LIABILITY ARE A CONDITION AND MATERIAL CONSIDERATION FOR THEIR ENTRY INTO THIS AGREEMENT.

**10. INSURANCE.** Intermedix shall procure and maintain for the duration of the Agreement, the following insurance coverage: (i) workers' compensation insurance in compliance with the applicable state and federal laws; (ii) general liability insurance in an amount no less than \$1,000,000 per occurrence; (iii) coverage for business interruption, destruction of data processing equipment and media, liabilities affecting accounts receivable, and valuable documents in an amount no less than \$100,000 aggregate; and (iv) liability coverage for all vehicles whether owned, hired or used in the amount of \$500,000.

**11. CONFIDENTIALITY AND HIPAA BUSINESS ASSOCIATE OBLIGATIONS.**

**11.01 Confidential Information.** Each party (the "Discloser") may disclose to the other party (the "Recipient") certain non-public information relating to the Discloser's

business, including technical, marketing, financial, personnel, planning, medical records and other information that is marked confidential or which the Recipient should reasonably know to be confidential given the nature of the information and the circumstance of disclosure ("Confidential Information"). Confidential Information of each party shall also include the terms of this Agreement, but not the existence and general nature of this Agreement. Confidential Information will not include any information: (i) lawfully obtained or created by the Recipient independently of, and without use of, Discloser's Confidential Information and without breach of any obligation of confidence or violation of HIPAA or the HITECH Act; or (ii) that is in or enters the public domain without breach of any obligation of confidence. CITY shall be responsible for any breach by any of its Users, employees or agents of any of the confidentiality obligations set forth herein.

**11.02 Use and Disclosure.** Except as expressly permitted by this Agreement or the BA Agreement (as applicable) and subject to applicable law, the Recipient will:

(a) not disclose Discloser's Confidential Information except: (i) to the employees or contractors of the Recipient to the extent that they need to know that Confidential Information for the purpose of performing the Recipient's obligations under this Agreement, and who are bound by confidentiality terms with respect to that Confidential Information no less restrictive than those contained in this Section 11.02; or (ii) as required to be disclosed by law, to the extent required to comply with that legal obligation, provided that the Recipient will promptly notify the Discloser of such obligation;

(b) use the Discloser's Confidential Information only for the purpose of performing Recipient's obligations under this Agreement;

(c) use all reasonable care in handling and securing the Discloser's Confidential Information, and employ all reasonable data security measures that the Recipient ordinarily uses with respect to its own proprietary information of similar nature and importance; and

(d) use and disclose Confidential Information that contains Protected Health Information in accordance with the terms of the Business Associate Agreement attached hereto as Exhibit B (the "BA Agreement"), if applicable.

**11.03 Return of Confidential Information.** Subject to Intermedix's internal data retention policies and applicable law, the Recipient will return to the Discloser, and destroy or erase all of the Disclosure Confidential Information in tangible form, upon the expiration or termination of this Agreement, and the Recipient will promptly certify in writing to the Discloser that it has done so.

**11.04 HIPAA Business Associate Exhibit/Changes In HIPAA.** Each party agrees to the obligations set forth in the BA Agreement attached hereto as Exhibit B (the "BA Agreement"). Such BA Agreement constitutes the complete and exclusive agreement between the parties with respect to Intermedix's obligations regarding

Protected Health Information, superseding and replacing any and all prior agreements, communications, representations, and understandings (both written and oral) regarding such subject matter; provided, however, that in the event of any additions, modifications or amendments to any statute or regulation including HIPAA or future federal regulations adopted pursuant thereto, then Intermedix and CITY shall promptly enter into negotiations to revise the BA Agreement to reflect such changes. Upon the execution by the parties of a revised BA Agreement (a "Revised BA Agreement"), such Revised BA Agreement will supersede the current BA Agreement in its entirety and such current BA Agreement will no longer be of any force or effect.

**11.05 Right to Injunctive Relief.** The parties expressly acknowledge and agree that the breach, or threatened breach, by a party of any provision of this Article XI may cause the other party to be irreparably harmed and that the harmed party may not have an adequate remedy at law. Therefore, the parties agree that upon such breach, or threatened breach, the harmed party will be entitled to seek injunctive relief to prevent the other party from commencing or continuing any action constituting such breach without having to post a bond or other security and without having to prove the inadequacy of any other available remedies. Nothing in this paragraph will be deemed to limit or abridge any other remedy available to either party at law or in equity.

**12. NON-SOLICITATION.** For the Term of this Agreement and for one (1) year after its termination, CITY shall not employ or hire any employee or former employee of Intermedix who, pursuant to this Agreement, has had any contact with employees or representatives of CITY or has worked on CITY's accounts, without the prior written consent of Intermedix.

**13. ATTACHMENTS.** The following named attachments are made an integral part of this Agreement:

- (a) Scope of Services (Exhibit A attached hereto and made a part hereof);
- (b) Business Associate Agreement (Exhibit B attached hereto and made a part hereof);
- (c) Optional Services (Exhibit C attached hereto and made a part hereof); and
- (d) Addendum to Service Agreement – TripTix Program (Exhibit D attached hereto and made a part thereto).

**14. TERM AND TERMINATION.**

**14.01 Term.** This Agreement shall be effective for a three-year period, commencing September 1, 2011 through August 31, 2014 unless terminated as provided in Section 14.02 below (the "Initial Term"). Following the expiration of the Initial Term, subject to the payment of all fees due hereunder, this Agreement shall renew for successive, two (2) automatically renewable three (3) year periods ("Renewal Terms"; collectively, the Initial Term together with any Renewal Terms are the "Term"), unless either party provides the other party with written notice of termination of this Agreement as provided in Section 14.02 below. All terms and conditions hereof shall remain in full

force and effect during the Term unless this Agreement is amended in a writing executed by each Party hereto.

**14.02 Events Triggering Termination.** This Agreement shall be subject to termination under the following conditions.

(a) Following the period one (1) year from the Effective Date of this Agreement, either CITY or Intermedix may terminate this Agreement without cause upon six (6) months prior written notice to the other party.

(b) If Intermedix fails to materially perform any obligation required hereunder, and such default continues for thirty (30) calendar days after written notice from CITY specifying the nature and extent of the failure to materially perform such obligation, this Agreement shall terminate upon the expiration of said thirty (30) calendar day period.

(c) If CITY fails to materially perform any obligation required hereunder, and such default continues for thirty (30) calendar days after written notice from Intermedix specifying the nature and extent of the failure to materially perform such obligation, this Agreement shall terminate upon the expiration of said thirty (30) calendar day period.

(d) If CITY or Intermedix shall: (i) apply for or consent to the appointment of a petition in bankruptcy; (ii) make a general assignment for the benefit of creditors; (iii) file a petition or answer seeking reorganization or arrangement with creditors; or (iv) take advantage of any insolvency, or if any order, judgment, or decree shall be entered by any court of competent jurisdiction on the application of a creditor or otherwise adjudicating either party bankrupt or approving a petition seeking reorganization of either party or appointment of a receiver, trustee or liquidator of either party or all or a substantial part of its assets (subsections (i) through (iv), each a "Bankruptcy Event"), this Agreement shall terminate automatically and immediately upon written notice from the other party to the party who has incurred a Bankruptcy Event.

**14.03 Rights Upon Termination.** If this Agreement is terminated for any reason, including, without limitation, the breach of this Agreement by any party, Intermedix shall be entitled to recover when due and payable hereunder, all amounts owed to Intermedix hereunder accrued but unpaid as of the date of termination. Following termination of this Agreement, for a period of ninety (90) days (the "Transition Period"), Intermedix, at its sole discretion and upon written notice to CITY of its election to do so, may continue its billing and collection efforts as to those accounts referred to Intermedix prior to the effective date of termination, subject to the terms and conditions of this Agreement, for the fee set forth in Article 5 above. At the end of the Transition Period, Intermedix shall return all records to CITY in a commercially standard format on a commercially standard media as determined by Intermedix in its sole discretion; provided, however, that Intermedix may keep any copies of records in accordance with applicable law. The expiration or termination of this Agreement, for whatever reason, will not discharge or

relieve either party from any obligation which accrued prior to such expiration or termination, will not relieve either party that has breached this Agreement from liability for damages resulting from such breach and will not destroy or diminish the binding force and effect of any of the provisions of this Agreement that expressly, or by reasonable implication, come into or continue in effect on or after expiration or termination hereof.

**15. INDEMNIFICATION.** CONTRACTOR agrees to indemnify, defend, save, and hold harmless the City of Margate, their officers and employees, from or on account of all damages, losses, liabilities, including but not limited to reasonable attorneys fees, and costs to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of this agreement.

**16. FORCE MAJEURE.** Except for CITY's obligation to pay, when due, the fees and compensation owed to Intermedix pursuant to the terms and conditions of this Agreement, neither CITY nor Intermedix shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to a Force Majeure Event (as defined below), the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Force Majeure Event" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the non-performing party and includes, but is not limited to fire, flood, earthquakes, storms, lightning, natural disaster, epidemic, war, riot, civil disturbance, sabotage, terrorism and governmental actions. The non-performing party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

**17. GOVERNING LAW.** This agreement shall have been deemed to have been executed within the State of Florida. The validity, construction, and effect of this Agreement shall be governed by the laws of the State of Florida. Any claim, objection or dispute arising out of this Agreement shall be litigated in the Seventeenth Judicial Circuit in and for Broward County, Florida.

**18. WAIVER OF JURY TRIAL.** The parties to this agreement hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action, proceeding, lawsuit or counterclaim based upon the contract, arising out of, under, or in connection with the matters to be accomplished in this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or the actions or inactions of any party.

**19. GENERAL WARRANTIES AND DISCLAIMERS.**

**19.01 Corporate Authority.** Each party warrants that it is a duly organized and validly existing corporation and has complete and unrestricted corporate power and authority to enter into this Agreement.

**19.02 Disclaimer.** THE WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, WHICH WARRANTIES ARE HEREBY SPECIFICALLY DISCLAIMED. NO REPRESENTATIVE OF INTERMEDIX SHALL HAVE THE RIGHT TO MAKE WARRANTIES ON INTERMEDIX'S BEHALF UNLESS THOSE WARRANTIES ARE IN WRITING AND EXECUTED BY A DULY AUTHORIZED OFFICER OF INTERMEDIX.

**20. EXPORT LAWS.** CITY shall comply with all then current export laws and regulations of the U.S. Government and the government of the country in which CITY receives access to the Services.

**21. ASSIGNMENT OF AGREEMENT.** This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party shall assign this Agreement without the express written consent of the other party, and such consent shall not be unreasonably withheld. Notwithstanding the foregoing sentence, Intermedix may, upon notice to CITY, assign this Agreement to any affiliate or any entity resulting from the sale, combination or transfer of all or substantially all of the assets or capital stock, or from any other corporate form of reorganization by or of Intermedix. Intermedix may subcontract any of its obligations under this Agreement, and may perform those obligations through personnel employed by or under contract with Intermedix.

**22. NOTICES.** Any notice directed to the parties' legal rights and remedies under this Agreement will be provided in writing and will reference this Agreement. Such notices will be deemed given if sent by: (i) facsimile, when complete transmission to the recipient is confirmed by the sender's facsimile machine; (ii) postage prepaid registered or certified U.S. Post mail, then five (5) working days after sending; or (iii) commercial courier, then at the time of receipt confirmed by the recipient to the courier on delivery. All notices to a party will be sent to its address set forth below, or to such other address as may be designated by that party by notice to the other party in accordance with this Section:

To CITY:

City of Margate  
ATTN: City Manager  
5790 Margate Boulevard  
Margate, Florida 33063

To Intermedix:

Brad Williams  
Vice President, Finance  
Intermedix Corporation  
6451 North Federal Highway, Suite 1002  
Fort Lauderdale, Florida 33308

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

24. **ENTIRE AGREEMENT.** This Agreement, including exhibits, attachments and written terms incorporated by reference, is the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications, and understandings (both written and oral) regarding such subject matter. Pre-printed terms and conditions on or attached to any CITY purchase orders or other business forms shall be of no force or effect, even if Intermedix acknowledges or accepts them.

25. **AMENDMENT/WAIVER.** This Agreement may be modified, or any rights under it waived, only by a written document executed by both parties. Any failure of a party to exercise or enforce any of its rights under this Agreement will not act as a waiver of such rights. No waiver of any provision, covenant or condition within this agreement or of the breach of any provision, covenant or condition within this agreement shall be taken to constitute a waiver of any subsequent breach of such provision, covenant or condition.

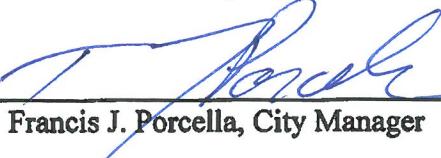
26. **NO THIRD PARTY BENEFICIARIES.** Except as expressly provided in this Agreement, nothing in this Agreement shall confer upon any person other than the parties and their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever.

27. **COUNTERPARTS.** The parties may execute this Agreement in one or more counterparts, each of which shall be an original, and which together shall constitute one instrument.

IN WITNESS OF THE FOREGOING, CITY has caused this Agreement to be signed by its City Mayor and City Manager, attested by its City Clerk with the corporate seal of City of Margate, and Intermedix has executed this Agreement effective as of the date set forth above.

ATTEST:

CITY OF MARGATE (CITY)

By: 

Francis J. Porcella, City Manager

By: 

Pam Donovan, City Mayor

By: 

Leslie Wallace May  
CITY Clerk

Date: 8/24/11

INTERMEDIX

Advanced Data Processing, Inc.

A Delaware Corporation



DOUG SHAMON,  
PRESIDENT

(CORPORATE SEAL)

STATE OF FLORIDA  
BROWARD COUNTY

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared Doug Shamon, as President of Advanced Data Processing, Inc., a Delaware corporation, and acknowledged execution of the foregoing AGREEMENT for the use and purposes mentioned in it and that the instrument is the act and deed of INTERMEDIX.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at Ft. Lauderdale in the State and County aforesaid on September 12, 20 11.



Notary Public, State of Florida

My Commission expires:

5/12/2013



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**Exhibit A**  
**Scope of Services**

***Base Services and Obligations:***

- A. Intermedix shall revenue cycle management services for CITY as described below. Intermedix shall, during the Term:
  1. Prepare and submit initial claims and bills for CITY promptly upon receipt thereof, and prepare and submit secondary claims and bills promptly after identification of the need to submit a secondary claim.
  2. Assist CITY in identifying necessary documentation in order to process and bill the accounts.
  3. Direct payments to a lockbox or bank account designated by CITY, to which CITY alone will have signature authority.
  4. Pursue appeals of denials, partial denials and rejections when deemed appropriate by Intermedix.
  5. Respond to and follow up with Payors and respond to messages or inquiries from a Payor.
  6. Provide appropriate storage and data back-up for records pertaining to CITY's bills and collections hereunder, accessible to CITY at reasonable times.
  7. Maintain records of services performed and financial transactions.
  8. Meet, as needed, with representatives of CITY to discuss results, problems and recommendations.
  9. Provide any CITY-designated collection agency with the data necessary for collection services to be performed when an account is referred to such agency.
  10. Support the provider in filing and maintaining required documentation and agreements with Payors (e.g., Medicare, Medicaid, Champus, etc.). However, Provider shall remain responsible for all required documentation.
  11. Provide reasonably necessary training periodically, as requested by CITY, to CITY's emergency medical personnel regarding the gathering of the necessary information and proper completion of run reports.
  12. Utilize up-to-date knowledge and information with regard to coding requirements and standards, to comply with applicable federal, state and local regulations.
  13. Provide a designated liaison for CITY, patient and other Payor concerns.

14. Provide a toll free telephone number for patients and other Payors to be answered as designated by CITY.

15. Facilitate proper security of confidential information and proper shredding of disposed materials containing such information including the proper disposal of electronic data and devices containing such data (if to be disposed). Handling of such data and information is maintained in compliance with all applicable federal and state regulations and laws.

16. Establish arrangements with hospitals to obtain/verify patient insurance and contact information.

17. Respond to any CITY, Payor or patient inquiry or questions promptly.

18. Maintain appropriate accounting procedures for reconciling deposits, receivables, billings, patient accounts, adjustments and refunds.

19. Provide reasonable access to CITY for requested information in order for CITY to perform appropriate and periodic audits. Reasonable notice will be given to Intermedix for any planned audit and will be conducted during normal business hours of Intermedix, all at the CITY's expense.

20. Provide timely reports facilitating required aspects of monitoring, evaluating, auditing and managing the Services provided.

21. Process refund requests and provide CITY with documentation substantiating each refund requested.

22. Intermedix acknowledges its obligations as CITY's Business Associate under the requirements of the Identity Theft Red Flag Rules promulgated under the Fair and Accurate Credit Transactions Act of 2003 ("Red Flag Rules") found in 16 C.F.R. Part 681. Intermedix will ensure that its activities for CITY are conducted in accordance with reasonable policies and procedures designed to help detect, prevent and mitigate the risk of identity theft. Intermedix will use reasonable efforts to help ensure that any agent or third party who performs services on Intermedix's behalf in connection with this Agreement, including subcontractors, also agrees to implement reasonable policies and procedures designed to detect, prevent and mitigate the risk of identity theft. Intermedix will promptly alert CITY of any red flag incident involving CITY's data or that of CITY Patients in Intermedix's possession of which we become aware, and the steps that are being taken to mitigate any potential security compromise.

23. Assign billing to patient account numbers providing cross-reference to CITY's assigned transport numbers.

24. Maintain responsibility for obtaining missing or incomplete insurance information.

25. Provide accurate coding of medical claims based on information provided by CITY.

26. Negotiate and arrange modified payment schedules for individuals unable to pay full amount when billed.

27. Retain accounts for a minimum of twelve (12) months (unless otherwise specified by mutual agreement) and after (12) months turn over accounts for which no collection has been made (unless insurance payment is pending) to an agency designated by CITY. Notwithstanding the foregoing, no account shall be turned over for collection without CITY's consent.]

28. Permit real-time read only electronic look-up access by CITY to Intermedix's SaaS Service to obtain patient data and billing information.

29. Maintain records in an electronic format that is readily accessible by CITY personnel and that meets federal and state requirements for maintaining patient medical records.

30. Create, implement and comply with a Compliance Plan consistent with the Compliance Program Guidance for Third Party Medical Billing Companies 63 FR 70138; (December 18, 1998) promulgated by the Office of Inspector General of the Department of Health and Human Services (OIG).

**B. CITY's Responsibilities and Obligations:**

1. From each person who receives EMS from CITY ("Patient"), CITY shall use its best efforts to obtain and forward the following information ("Patient Information") to Intermedix:

(i) the Patient's full name and date of birth;

(ii) the mailing address (including zip code) and telephone number of the Patient or other party responsible for payment ("Guarantor");

(iii) the Patient's social security number;

(iv) the name and address of the Patient's health insurance carrier, name of policyholder or primary covered party, and any applicable group and identification numbers;

(v) the auto insurance carrier address and/or agent's name and phone number if an automobile is involved;

(vi) the employer's name, address and Workers Compensation Insurance information if the incident is work related;

(vii) the Patient's Medicare or Medicaid HIC numbers if applicable;

(viii) the Patient's or other responsible party's signed payment authorization and release of medical authorization form or other documentation sufficient to comply with applicable signature requirements;

(ix) the call times, transporting unit, and crew members with their license level, i.e. EMT-B, EMT-I, or EMT-P;

(x) odometer readings such that loaded miles may be calculated;

(xi) physician certification statements (PCS) for non-emergency transports that are to be billed to Medicare pursuant to CMS regulations; and

(xii) any other information that Intermedix may reasonably require to bill the Patient or other Payor.

2. CITY represents and warrants that all information provided to Intermedix shall be accurate and complete. Intermedix shall have no obligation to verify the accuracy of such information, and CITY shall be solely responsible for such accuracy. CITY agrees to indemnify and hold Intermedix, its agents, and employees harmless from any and all liabilities and costs, including reasonable attorneys' fees, resulting from (a) any inaccurate or misleading information provided to Intermedix that results in the actual or alleged submission of a false or fraudulent claim or (b) any other actual or alleged violation of local, state or federal laws., including but not limited laws applicable to Medicare, Medicaid or any other public or private Payor or enforcement agency.

3. CITY will provide Intermedix with necessary documents required by third parties to allow for the electronic filing of claims by Intermedix on CITY's behalf.

4. CITY will provide Intermedix with its approved billing policies and procedures, including dispatch protocols, fee schedules and collection protocols. CITY will be responsible for engaging any third party collection service for uncollectible accounts after Intermedix has exhausted its collection efforts.

5. CITY will timely process refunds identified by Intermedix for account overpayments.

6. CITY will provide a lock box or bank account address to Intermedix and will instruct the lock box or bank custodian agency to forward all documents to Intermedix for processing.

7. CITY will provide Intermedix with daily bank balance reporting capabilities via the bank's designated web site.

8. CITY will cooperate with Intermedix in all matters to ensure proper compliance with laws and regulations.

9. CITY represents and warrants that all of its employees, personnel and independent contractors involved in the delivery of EMS or otherwise performing

services for CITY: (i) hold the licensure or certification required to perform such services, (ii) have not been convicted of a criminal offense related to health care or been listed as debarred, excluded or otherwise ineligible for participation in a Federal health care program and (iii) are not excluded persons listed on any of the following: (a) the Office of the Inspector General List of Excluded Individuals and Entities; (b) the General Services Administration's Excluded Parties List; and (c) the Office of Foreign Asset Control's Specially Designated Nationals List.

10. CITY agrees that it will forward to Intermedix copies of checks, or other payment documentation requested by Intermedix relating to the subject matter of this Agreement, within 10 days of the date of receipt of those payments.

11. CITY agrees to notify Intermedix in the event that their Epcr vendor performs any system upgrades. Notification may be made in writing to [support@Intermedix.com](mailto:support@Intermedix.com).

**Exhibit B**  
**Business Associate Addendum**

This Business Associate Agreement (“Agreement”) is entered into between the City of Margate (“Covered Entity”) and Advanced Data Processing, Inc. (“Business Associate”), effective as of the first date of this Agreement (the “Effective Date”).

WHEREAS, Covered Entity and Business Associate have entered into, or plan to enter into, an agreement or other documented arrangement (the “Underlying Agreement”), pursuant to which Business Associate may provide services for Covered Entity that require Business Associate to access, create and/or use Protected Health Information (“PHI”) that is confidential under state and/or federal law; and

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed by Covered Entity to Business Associate, or collected or created by Business Associate pursuant to the Underlying Agreement, in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), and the regulations promulgated there under, including, without limitation, the regulations codified at 45 CFR Parts 160 and 164 (“HIPAA Regulations”); and the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009, and its implementing regulations and guidance issued by the Secretary of the Department of Health and Human Services (the “Secretary”) (the “HITECH Act”), and other applicable state and federal laws, all as amended from time to time; and

WHEREAS, the HIPAA Regulations require Covered Entity to enter into an agreement with Business Associate meeting certain requirements with respect to the Use and Disclosure of PHI, which are met by this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and the exchange of information pursuant to this Agreement, the parties agree as follows:

1. **Definitions.**

Capitalized terms used herein without definition shall have the meanings ascribed to them in the HIPAA Regulations or the HITECH Act, as applicable, unless otherwise defined herein.

2. **Obligations of Business Associate.**

a. **Permitted Uses and Disclosures.** Business Associate shall only Use or Disclose PHI for the purposes of (i) performing Business Associate’s obligations under the Underlying Agreement and as permitted by this Agreement; or (ii) as permitted or required by law; or (iii) as otherwise permitted by this Agreement. Further, Business Associate shall not Use or Disclose PHI in any manner that would constitute a violation of the HIPAA Regulations or the HITECH Act if so used by Covered Entity, except that Business Associate may Use PHI (i) for the proper management and administration of Business Associate; or (ii) to carry out the legal responsibilities of Business Associate. Business Associate may Disclose PHI for the proper management and administration of Business Associate, to carry out its legal responsibilities or for payment purposes as specified in 45 CFR § 164.506(c)(1) and (3), including but not limited

to Disclosure to a business associate on behalf of a covered entity or health care provider for payment purposes of such covered entity or health care provider, with the expectation that such parties will provide reciprocal assistance to Covered Entity, provided that with respect to any such Disclosure either (i) the Disclosure is Required by Law; or (ii) for permitted Disclosures when required by law, Business Associate shall obtain a written agreement from the person to whom the PHI is to be Disclosed that such person will hold the PHI in confidence and will not use and further disclose such PHI except as Required by Law and for the purpose(s) for which it was Disclosed by Business Associate to such person, and that such person will notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

b. Appropriate Safeguards. Business Associate shall implement administrative, physical, and technical safeguards that (i) reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity; and (ii) prevent the Use or Disclosure of PHI other than as contemplated by the Underlying Agreement and this Agreement.

c. Compliance with Security Provisions. Business Associate shall (i) implement and maintain administrative safeguards as required by 45 CFR § 164.308, physical safeguards as required by 45 CFR § 164.310 and technical safeguards as required by 45 CFR § 164.312; (ii) implement and document reasonable and appropriate policies and procedures as required by 45 CFR § 164.316; and (iii) be in compliance with all requirements of the HITECH Act related to security and applicable as if Business Associate were a "covered entity," as such term is defined in HIPAA.

d. Compliance with Privacy Provisions. Business Associate shall only Use and Disclose PHI in compliance with each applicable requirement of 45 CFR § 164.504(e). Business Associate shall comply with all requirements of the HITECH Act related to privacy and applicable as if Business Associate were a "covered entity," as such term is defined in HIPAA.

e. Duty to Mitigate. Business Associate agrees to mitigate, to the extent practicable and mandated by law, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

f. Encryption. To facilitate Business Associate's compliance with this Agreement and to assure adequate data security, Covered Entity agrees that all PHI provided or transmitted to Business Associate pursuant to the Underlying Agreement shall be provided or transmitted in a manner which renders such PHI Unusable, Unreadable or Indecipherable to Unauthorized Individuals, through the use of a technology or methodology specified by the Secretary in the guidance issued under Section 13402(h)(2) of the HITECH Act on the HHS Web site. Covered Entity acknowledges that failure to do so could contribute to or permit a Breach triggering notification obligations under the HITECH Act and further agrees that Business Associate shall have no liability for any Breach caused by such failure.

3. Reporting.

a. Security Incidents and/or Unauthorized Use or Disclosure. Business Associate shall report to Covered Entity a successful Security Incident or any Use and/or Disclosure of PHI other than as provided for by this Agreement or permitted by applicable law within a reasonable time of becoming aware of such Security Incident and/or unauthorized Use or Disclosure (but not later than ten (10) days thereafter), in accordance with the notice provisions set forth herein. Business Associate shall take (i) prompt action to cure any such deficiencies as reasonably requested by Covered Entity; and (ii) any action pertaining to such Security Incident and/or unauthorized Use or Disclosure required by applicable federal and state laws and regulations. If such successful Security Incident or unauthorized Use or Disclosure results in a Breach as defined in the HITECH Act, then Business Associate shall comply with the requirements of Section 3.b below.

b. Breach of Unsecured PHI. The provisions of this Section 3.b are effective with respect to the discovery of a Breach of Unsecured PHI occurring on or after September 23, 2009. With respect to any unauthorized acquisition, access, Use or Disclosure of Covered Entity's PHI by Business Associate, its agents or subcontractors, Business Associate shall (i) investigate such unauthorized acquisition, access, Use or Disclosure; (ii) determine whether such unauthorized acquisition, access, Use or Disclosure constitutes a reportable Breach under the HITECH Act; and (iii) document and retain its findings under clauses (i) and (ii). If Business Associate discovers that a reportable Breach has occurred, Business Associate shall notify Covered Entity of such reportable Breach in writing within thirty (30) days of the date Business Associate discovers such Breach. Business Associate shall be deemed to have discovered a Breach as of the first day that the Breach is either known to Business Associate or any of its employees, officers or agents, other than the person who committed the Breach, or by exercising reasonable diligence should have been known to Business Associate or any of its employees, officers or agents, other than the person who committed the Breach. To the extent the information is available to Business Associate, Business Associate's written notice shall include the information required by 45 CFR § 164.410. Business Associate shall promptly supplement the written report with additional information regarding the Breach as it obtains such information. Business Associate shall cooperate with Covered Entity in meeting Covered Entity's obligations under the HITECH Act with respect to such Breach.

4. Business Associate's Agents. To the extent that Business Associate uses one or more subcontractors or agents to provide services under the Underlying Agreement, and such subcontractors or agents receive or have access to PHI, Business Associate shall sign an agreement with such subcontractors or agents containing substantially the same provisions as this Agreement.

5. Rights of Individuals.

a. Access to PHI. Within ten (10) days of receipt of a request by Covered Entity, Business Associate shall make PHI maintained in a Designated Record Set available to Covered Entity or, as directed by Covered Entity, to an individual to enable Covered Entity to fulfill its obligations under 45 CFR § 164.524. Subject to Section 5.b below, (i) in the event that any individual requests access to PHI directly from Business Associate in connection with a routine

billing inquiry, Business Associate shall directly respond to such request in compliance with 45 CFR § 164.524; and (ii) in the event such request appears to be for a purpose other than a routine billing inquiry, Business Associate shall forward a copy of such request to Covered Entity and shall fully cooperate with Covered Entity in responding to such request. In either case, a denial of access to requested PHI shall not be made without the prior written consent of Covered Entity.

b. Access to Electronic Health Records. If Business Associate is deemed to use or maintain an Electronic Health Record on behalf of Covered Entity with respect to PHI, then, to the extent an individual has the right to request a copy of the PHI maintained in such Electronic Health Record pursuant to 45 CFR § 164.524 and makes such a request to Business Associate, Business Associate shall provide such individual with a copy of the information contained in such Electronic Health Record in an electronic format and, if the individual so chooses, transmit such copy directly to an entity or person designated by the individual. Business Associate may charge a fee to the individual for providing a copy of such information, but such fee may not exceed Business Associate's labor costs in responding to the request for the copy. The provisions of 45 CFR § 164.524, including the exceptions to the requirement to provide a copy of PHI, shall otherwise apply and Business Associate shall comply therewith as if Business Associate were the "covered entity," as such term is defined in HIPAA. At Covered Entity's request, Business Associate shall provide Covered Entity with a copy of an individual's PHI maintained in an Electronic Health Record in an electronic format and in a time and manner designated by Covered Entity in order for Covered Entity to comply with 45 CFR § 164.524, as amended by the HITECH Act.

c. Amendment of PHI. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.

d. Accounting Rights. This Section 5.d is subject to Section 5.e below. Business Associate shall make available to Covered Entity, in response to a request from an individual, information required for an accounting of disclosures of PHI with respect to the individual, in accordance with 45 CFR § 164.528, incorporating exceptions to such accounting designated under such regulation. Such accounting is limited to disclosures that were made in the six (6) years prior to the request and shall not include any disclosures that were made prior to the compliance date of the HIPAA Regulations. Business Associate shall provide such information as is necessary to provide an accounting within ten (10) days of Covered Entity's request. Such accounting must be provided without cost to the individual or to Covered Entity if it is the first accounting requested by an individual within any twelve (12) month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if Business Associate informs Covered Entity and Covered Entity informs the individual in advance of the fee, and the individual is afforded an opportunity to withdraw or modify the request. Such accounting obligations shall survive termination of this Agreement and shall continue as long as Business Associate maintains PHI.

e. Accounting of Disclosures of Electronic Health Records. The provisions of this Section 5.e shall be effective on the date specified in the HITECH Act. If Business Associate is deemed to use or maintain an Electronic Health Record on behalf of Covered Entity, then, in

addition to complying with the requirements set forth in Section 5.d above, Business Associate shall maintain an accounting of any Disclosures made through such Electronic Health Record for Treatment, Payment and Health Care Operations, as applicable. Such accounting shall comply with the requirements of the HITECH Act. Upon request by Covered Entity, Business Associate shall provide such accounting to Covered Entity in the time and manner specified by Covered Entity and in compliance with the HITECH Act. Alternatively, if Covered Entity responds to an individual's request for an accounting of Disclosures made through an Electronic Health Record by providing the requesting individual with a list of all business associates acting on behalf of Covered Entity, then Business Associate shall provide such accounting directly to the requesting individual in the time and manner specified by the HITECH Act.

f. Agreement to Restrict Disclosure. If Covered Entity is required to comply with a restriction on the Disclosure of PHI pursuant to Section 13405 of the HITECH Act, then Covered Entity shall, to the extent necessary to comply with such restriction, provide written notice to Business Associate of the name of the individual requesting the restriction and the PHI affected thereby. Business Associate shall, upon receipt of such notification, not Disclose the identified PHI to any health plan for the purposes of carrying out Payment or Health Care Operations, except as otherwise required by law. Covered Entity shall also notify Business Associate of any other restriction to the Use or Disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522.

6. Remuneration and Marketing.

a. Remuneration for PHI. This Section 6.a shall be effective with respect to exchanges of PHI occurring six (6) months after the date of the promulgation of final regulations implementing the provisions of Section 13405(d) of the HITECH Act. On and after such date, Business Associate agrees that it shall not, directly or indirectly, receive remuneration in exchange for any PHI of Covered Entity except as otherwise permitted by the HITECH Act.

b. Limitations on Use of PHI for Marketing Purposes. Business Associate shall not Use or Disclose PHI for the purpose of making a communication about a product or service that encourages recipients of the communication to purchase or use the product or service, unless such communication: (i) complies with the requirements of subparagraph (i), (ii) or (iii) of paragraph (1) of the definition of marketing contained in 45 CFR § 164.501; and (ii) complies with the requirements of subparagraphs (A), (B) or (C) of Section 13406(a)(2) of the HITECH Act, and implementing regulations or guidance that may be issued or amended from time to time. Covered Entity agrees to assist Business Associate in determining if the foregoing requirements are met with respect to any such marketing communication.

7. Governmental Access to Records. Business Associate shall make its internal practices, books and records relating to the Use and Disclosure of PHI available to the Secretary for purposes of determining Covered Entity's compliance with the HIPAA Regulations and the HITECH Act. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity of all requests served upon Business Associate for information or documentation by or on behalf of the Secretary. Business Associate shall provide to Covered Entity a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary.

8. Minimum Necessary. To the extent required by the HITECH Act, Business Associate shall limit its Use, Disclosure or request of PHI to the Limited Data Set or, if needed, to the minimum necessary to accomplish the intended Use, Disclosure or request, respectively. Effective on the date the Secretary issues guidance on what constitutes "minimum necessary" for purposes of the HIPAA Regulations, Business Associate shall limit its Use, Disclosure or request of PHI to only the minimum necessary as set forth in such guidance.

9. State Privacy Laws. Business Associate shall comply with state laws to extent that such state privacy laws are not preempted by HIPAA or the HITECH Act.

10. Termination.

a. Breach by Business Associate. If Covered Entity knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate's obligations under this Agreement, then Covered Entity shall promptly notify Business Associate. With respect to such breach or violation, Covered Entity shall (i) take reasonable steps to cure such breach or end such violation, if possible; or (ii) if such steps are either not possible or are unsuccessful, upon written notice to Business Associate, terminate its relationship with Business Associate; or (iii) if such termination is not feasible, report Business Associate's breach or violation to the Secretary.

b. Breach by Covered Entity. If Business Associate knows of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of Covered Entity's obligations under this Agreement, then Business Associate shall promptly notify Covered Entity. With respect to such breach or violation, Business Associate shall (i) take reasonable steps to cure such breach or end such violation, if possible; or (ii) if such steps are either not possible or are unsuccessful, upon written notice to Covered Entity, terminate its relationship with Covered Entity; or (iii) if such termination is not feasible, report Covered Entity's breach or violation to the Secretary.

c. Effect of Termination. Upon termination of this Agreement for any reason, Business Associate shall either return or destroy all PHI, as requested by Covered Entity, that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI. If Covered Entity requests that Business Associate return PHI, such PHI shall be returned in a mutually agreed upon format and timeframe. If Business Associate reasonably determines that return or destruction is not feasible, Business Associate shall continue to 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 or destruction of such PHI not feasible. If Business Associate is asked to destroy the PHI, Business Associate shall destroy PHI in a manner that renders the PHI unusable, unreadable or indecipherable to unauthorized individuals as specified in the HITECH Act.

11. Amendment. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement any new or modified standards or requirements of HIPAA, the HIPAA Regulations, the HITECH Act and other applicable laws relating to the security or privacy of

PHI. Upon the request of Covered Entity, Business Associate agrees to promptly enter into negotiation concerning the terms of an amendment to this Agreement incorporating any such changes.

12. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

13. Effect on Underlying Agreement. In the event of any conflict between this Agreement and the Underlying Agreement, the terms of this Agreement shall control.

14. Survival. The provisions of this Agreement shall survive the termination or expiration of the Underlying Agreement.

15. Interpretation. This Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA Regulations and the HITECH Act. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with such laws.

16. Governing Law. To the extent this Agreement is not governed by federal law, this Agreement shall be construed in accordance with the laws of the State of Florida.

17. Notices. All notices required or permitted under this Agreement shall be in writing and sent to the other party as directed below or as otherwise directed by either party, from time to time, by written notice to the other. All such notices shall be deemed validly given upon receipt of such notice by certified mail, postage prepaid, facsimile transmission, e-mail or personal or courier delivery:

If to Covered Entity: City of Margate  
5790 Margate Boulevard  
Margate, Florida 33063  
Attn: City Manager

Telephone no: \_\_\_\_\_  
Facsimile no:

Email Address:

If to Business Associate: C/O Intermedix Corporation  
6451 N. Federal Highway, Suite 1002  
Ft. Lauderdale, Fl 33308  
Attn: Joe McCloskey, Vice President, Compliance Officer

Telephone no: 954-308-8714  
Facsimile no: 305-521-0785

Email Address: [joe.mccloskey@intermedix.com](mailto:joe.mccloskey@intermedix.com)

**Exhibit C**  
**Optional Services**

Intermedix will provide the following specific optional services by mutual written agreement with CITY:

1. CITY has purchased TripTix product pursuant to the terms and conditions of the Addendum to this Agreement and Intermedix shall provide TripTix based reporting extract of data required by the State of Florida connectivity/interface in a format reasonably required by the EMSTARS Reporting Program.
2. Intermedix will work with the CITY to develop a Computer Aided Dispatch (CAD) system interface for the purpose of importing Intermedix defined CAD data into the TripTix system. The CITY shall be responsible for any charge for this interface levied by the CAD vendor.

**Exhibit D**  
**Addendum to Service Agreement**  
**(TripTix Program)**

This Addendum to the Agreement (the "Addendum") hereby sets forth terms and conditions that apply only to the Product and Product Units listed in this Addendum. To the extent the terms and conditions of the Agreement are in conflict with this Addendum, the terms of this Addendum shall control. Where not different or in conflict with the terms, conditions and definitions of this Addendum, all applicable terms, conditions, and definitions set forth in the Agreement are incorporated within this Addendum as if set forth herein. Capitalized terms used herein and not otherwise defined herein shall have the meaning given to such terms in the Agreement.

WHEREAS, Intermedix has developed the TripTix solution or product running on personal tablet devices to enter medical records and data into and interact with its main billing and medical records system or SaaS Service (the "Product" as more particularly defined herein) that Intermedix is willing to make available to CITY to use during the Triptix Term, subject to the terms and conditions set forth herein; and

WHEREAS, CITY has expressed a desire to obtain a right to use the Product; and

WHEREAS, CITY acknowledges that, in connection with the provision of the Product and the Product Unit, Intermedix is incurring significant per unit and, in some cases, per User out of pocket expenses;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual promises and covenants contained herein and for other good and valuable consideration the adequacy and sufficiency of which is hereby acknowledged, the parties agree as follows:

**ARTICLE I. DEFINITIONS**

**1.01 Definitions.** For purposes of this Addendum, the following definitions shall apply:

"Addendum Effective Date" shall mean the date on which the last party to this Addendum executed it.

"Intellectual Property" shall mean all of Intermedix's rights in and to the Product and Product Unit, including, without limitation, Intermedix's copyrights, trademarks, trade dress, trade secrets, patents and patent applications (if any), and "know how" and any other proprietary information developed by Intermedix relevant to the Product and/or Product Unit, recognized in any jurisdiction in the world, now or hereafter existing, whether or not registered or registerable.

"Product" shall mean, collectively, each Product Unit (a tablet PC, personal digital assistant or similar device), the Software, a third party wireless card in the name of Intermedix and any Third-Party Intellectual Property Rights, as applicable.

“Product Unit” shall mean a single data collection device delivered pursuant to the terms and conditions of this Addendum containing one or more elements of the Product but shall not mean any ancillary devices or products provided by persons other than Intermedix.

“Software” means the copies of Intermedix’s software programs as are contained in the Product, including any documentation included therewith. Intermedix may, at its sole discretion, provide corrections and modifications to the Software from time to time.

“Third-Party Interface Devices” shall mean those devices that interface with the Product to transfer information, including medical monitoring devices for which Third-Party Intellectual Property Royalty Payments are made.

“Third-Party Intellectual Property Rights” shall mean the Intellectual Property rights of any third-party used in connection with the Product.

“Third-Party Intellectual Property Royalty Payments” shall mean the payments to be made directly by CITY or, indirectly, on CITY’s behalf, as consideration for the licensing of any Third-Party Intellectual Property Rights or use of any Third-Party Interface Devices.

“Users” shall mean: (i) any employees of CITY and (ii) any medical professional who is authorized to perform medical services for CITY in the area in which CITY operates its emergency medical services as of the Addendum Effective Date.

## ARTICLE II. PRICE AND PAYMENT

**2.01 Adjustment to Rates of Compensation under the Agreement.** The compensation due and owing Intermedix by CITY shall be increased as described in Section 5.01 of the Agreement during the TripTix Term. Additionally, in the event that CITY terminates this Addendum during the period eighteen months following the Addendum Effective Date, it shall pay an early termination fee as set out on Schedule 2.01 hereto.

**2.02 Product Fees.** In addition to the payments required pursuant to the provisions of Article 5 of the Agreement, CITY shall make the following payments:

- (i) **Two and 33 one-hundredths percent (2.33%) of all Net Collections for use of Intermedix provided field data capturing and reporting system consisting of Nine (9) Product Units and Two (2) spare Product Units; and**
- (ii) **all Third-Party Intellectual Property Royalty Payments as further set out on Schedule 2.02 hereto.**

## ARTICLE III. RIGHT TO USE PRODUCT AND PROPRIETARY RIGHTS

**3.01 Right to Use.** Commencing on the Addendum Effective Date and subject to the terms and conditions of this Addendum, Intermedix grants CITY and its Users a non-exclusive, non-transferable right to use the Product during the TripTix Term. This

right to use the Product during the TripTix Term does not constitute a sale of the Product or any portion or piece thereof.

**3.02 Delivery and Acceptance.** Intermedix will deliver to CITY, the Product at mutually agreeable times, after or simultaneously with the Addendum Effective Date.

**3.03 No Other Rights.** CITY's rights in the Product will be limited to those expressly granted in this Article III. All changes, modifications or improvements made or developed with regard to the Product by Intermedix, whether or not made or developed at CITY's request, shall be and remain the property of Intermedix. Intermedix reserves all Intellectual Property rights and any other rights in and to the Product not expressly granted to CITY hereunder.

**3.04 Restrictions.** CITY acknowledges that Intermedix and its suppliers, including, without limitation, the suppliers of certain Third-Party Intellectual Property Rights, have, retain and own all right, title and interest in and to the Product, and all patent, copyright, trademark and service mark and trade name and the goodwill associated therewith, trade secret, inventions, technology, ideas, know-how, and all other intellectual property rights and all other rights pertaining thereto. All such right, title and interest shall be and remain the sole property of Intermedix. CITY shall not be an owner of, or have any interest in the Product but rather, such CITY only has a right to use the Product pursuant to this Addendum. Neither CITY nor its Users shall: (i) remove any copyright, patent or other proprietary legends from the Product; (ii) sub-license, lease, rent, assign, transfer or allow any third-party any right to use the Product; (iii) alter, modify, copy, enhance or adapt any component of the Product; (iv) attempt to reverse engineer, covert, translate, decompile, disassemble or merge any portion of the Product with any other software or materials; (v) otherwise create or attempt to create any derivative works from this Product, or permit persons who are not Users any access to the Product or its operations, and any attempt to do any of the above shall void all warranties given CITY by Intermedix and shall be a material breach of this Addendum.

**3.05 Material Change to Product.** If there is any material change in any rules, orders, laws or regulations governing the manner in which this Product operates or in the data provided by third parties (such as changes in the manner of operation of global distribution systems or standards in wireless or non-wireless communications protocols); then upon written notice to CITY, Intermedix will have the right, retroactive to the date of such material change, to modify the way in which this Product delivers data in order to comport with any change in law or regulations or functionality governing the Product. All data used by Intermedix for testing and development shall be supplied by CITY at its expense to Intermedix promptly upon request by Intermedix to CITY.

#### **ARTICLE IV. PRODUCT UNITS**

**4.01 Generally.** CITY and Intermedix understand and agree that Intermedix shall make available one or more Product Units. CITY understands and acknowledges that any of the aforementioned Product Units provided by Intermedix will be subject to

the additional fee described in Section 2.02 of this Addendum. Also, in connection with the potential provision of such Product Units, CITY agrees:

(a) CITY will be responsible for any loss or damage to such Product Units. CITY agrees to pay: (i) the cost of repairs in excess of manufacturer extended warranty (attached hereto and made a part hereof) of any such Product Unit provided to it or (ii), if the Product Unit is irreparable, lost or stolen, for the replacement cost of the Product Unit. CITY is responsible for repair or replacement costs not covered by extended warranty provided by Intermedix. CITY agrees that CITY may obtain insurance for such devices provided that Intermedix is named as a beneficiary under such insurance. Intermedix will use commercially reasonable efforts to provide CITY with a replacement Product Unit within one business day following the business day on which the request is made.

(b) CITY agrees that it shall immediately (and in no greater than twenty four (24) hours from CITY's knowledge of the following) notify Intermedix of any loss or theft of a Product Unit (a "Product Unit Loss Event"). Upon Intermedix's receipt of notification given by the CITY of a Product Unit Loss Event, Intermedix shall have the right to immediately, without notice to CITY, suspend CITY's access to the Product and the Product Unit until such time as the Product Unit Loss Event has been fully resolved, and no longer presents a threat of inappropriate access to: (i) the Product, (ii) any other intellectual property rights of Intermedix or (iii) the personal data or Protected Health Information gathered by CITY in the performance of EMS by the CITY. To the extent that any Product Unit Loss Event involves Protected Health Information, and is subject to HIPAA, as amended by the HITECH Act, CITY shall comply with all applicable requirements under such laws, including any applicable HIPAA Notification requirements triggered by the Product Unit Loss Event. To the extent that a Product Unit Loss Event requires CITY to provide HIPAA Notifications, any such notifications shall not include a reference to Intermedix unless such a reference is specifically required by HIPAA or other applicable law. Further, if CITY intends to reference Intermedix in a HIPAA Notification based on its belief that such a reference is required by HIPAA or other applicable law, CITY shall provide Intermedix written notice of its intent to do so no later than ten (10) days prior to CITY's provision of each required HIPAA Notification (i.e. no later than ten (10) days prior to CITY's provision of notifications to affected individuals, HHS, and/or prominent media outlets, as applicable). CITY acknowledges that they are responsible for configuring the Product Unit security password configuration (the "Product Unit Security Configuration") and providing that Users provide adequate safeguard password security.

(c) CITY may be required to enter into additional agreements with the makers of third-party devices(monitors, scanners, EKG machines, etc.) with respect to the transmission of information between the third party device and the Product Unit. CITY understands and agrees that Intermedix will not be able to provide Product Units unless and until agreements are entered into with the third-party manufacturers of such third party devices. CITY understands and agrees that its failure to enter into or reach agreements with such third-parties (and any and all consequences of such failure) shall not be deemed to be a default of Intermedix under this Agreement or any other

arrangement between CITY and Intermedix. CITY further understands and agrees that the failure to enter into such agreements with these third parties may hinder CITY's use of certain software features that might otherwise be available to it (for instance, a direct data connection between a third party device and the Product Unit).

(d) CITY may be required to obtain new or different medical or other equipment capable of communicating with the Product Unit. CITY understands and agrees that such new or different medical or other equipment must be obtained at CITY's sole cost and expense.

(e) CITY may request Intermedix to support additional medical or other devices. CITY understands and agrees that the costs of developing an interface may be significant and may involve the payment of royalties to the third-party manufacturers of the device. CITY further understands and agrees that Intermedix has no obligation to undertake the development of interfaces with additional medical or other devices.

(f) CITY agrees to indemnify and hold Intermedix, its agents, and employees harmless from any and all liabilities and costs, and against any claim, suit, fine, or damages, including loss of profits, reasonable attorneys' fees, or interest, or any incidental, indirect, special, or consequential damages incurred as a result of any loss or damage to a Product Unit, the failure to utilize and require that its Users utilize one or more Product Unit Security Configurations which comply with the SaaS Security Characteristics, or an actual or alleged violation of local, state or federal laws, including, but not limited to, laws applicable to Medicare, Medicaid, HIPAA, the HITECH Act, or any other public or private Payor or enforcement agency.

## ARTICLE V. TERM AND TERMINATION

**5.01 Generally.** The term of this Addendum shall begin on the Addendum Effective Date and shall continue the termination or expiration of the Agreement, unless terminated as provided in Section 5.03 below ( the "TripTix Term").

**5.02 Termination.** Notwithstanding any other language herein or in the Agreement, a termination of the Addendum shall not operate to terminate the Agreement, but a termination of the Agreement shall operate as a termination of this Addendum.

**5.03 Termination of the Addendum.**

(a) If Intermedix fails to materially perform any obligation required hereunder, and such default continues for thirty (30) calendar days after written notice from CITY specifying the nature and extent of the failure to materially perform such obligation, CITY shall have the right to terminate this Addendum upon the expiration of said thirty (30) calendar day period, without any obligation to pay any early termination payment outlined in Schedule 2.01.

(b) If CITY fails to materially perform any obligation required hereunder, and such default continues for thirty (30) calendar days after written notice

from Intermedix specifying the nature and extent of the failure to materially perform such obligation, Intermedix shall have the right to terminate this Addendum upon the expiration of said thirty (30) calendar day period, and any early termination payment outlined in Schedule 2.01 shall be immediately due and payable.

(c) CITY may terminate this Addendum (but not the Agreement) at any time for convenience by providing thirty (30) prior written notice to Intermedix, and making payment in full of the required early termination payment disclosed on Schedule 2.01 with respect to each Product Unit delivered pursuant to this Addendum, which shall be immediately due and payable as of the date of such written notice of termination. As of the effective date of such termination, CITY shall return all Product Units to Intermedix and shall have no further right to access the Product provided hereunder.

(d) Intermedix may terminate this Addendum without cause upon six (6) months prior written notice to CITY.

**5.04 Obligations Following Termination.** Any termination of the Addendum shall not release CITY or Intermedix from any claim of the other accrued hereunder prior to the effective date of such termination. Upon termination of this Addendum, Intermedix shall remain the sole owner of the Product and all Intellectual Property and goodwill associated therewith, and CITY shall assert no rights thereto. Upon termination of this Addendum for any reason, CITY shall immediately discontinue use of the Product, and within ten (10) days, return each of the Product Units and certify in writing to Intermedix that all copies, extracts or derivatives of any item comprising the Product, in whole or in part, in any form, have either been delivered to Intermedix or destroyed in accordance with Intermedix's instructions. All payments made by CITY to Intermedix hereunder are non-refundable.

## **ARTICLE VI. LIMITED WARRANTY AND DISCLAIMER:**

**6.01 Product Warranty.** Intermedix warrants that each Product Unit delivered to CITY will be free from material defects when delivered.

**6.02 Information/Disclaimer of Warranties with Respect to Data and Information Provided by Third Parties.** Some information transmittable or accessible through any Product Unit may have been obtained through sources believed to be reliable (such as various Internet providers, real-time data provided by GPS systems or medical devices or other third party information sources). CITY agrees that Intermedix shall not have any liability whatsoever for the accuracy, completeness, timeliness or correct sequencing of the information, or for any decision made or action taken by CITY in reliance upon such information or the Product. CITY further agrees that Intermedix shall have no liability whatsoever for the transmission, non-transmission or partial transmission of data through third-party data systems and that such transmission shall be undertaken at CITY's sole risk, cost and expense.

**6.03 Disclaimer.** Intermedix and its third party suppliers do not warrant that any Product will meet CITY's requirements or that access to the Product, or the operation

of the Product, will be uninterrupted, error-free, that all errors will be timely corrected, or that the data and/or reports generated by the Product will be accurate in the event that any third party information providers have provided inaccurate information. THE WARRANTIES EXPRESSLY PROVIDED IN THIS ADDENDUM AND THE AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, WHICH WARRANTIES ARE HEREBY SPECIFICALLY DISCLAIMED. NO REPRESENTATIVE OF INTERMEDIX SHALL HAVE THE RIGHT TO MAKE WARRANTIES ON INTERMEDIX'S BEHALF UNLESS THOSE WARRANTIES ARE IN WRITING AND EXECUTED BY A DULY AUTHORIZED OFFICER OF INTERMEDIX.

**6.04 Exclusive Remedy.** For any breach of the warranties set forth in Section 6.01, Intermedix, shall, following written notice thereof by CITY, use diligence efforts, at Intermedix's sole expense, promptly to repair or replace the nonconforming Product or Product Unit. This is Intermedix's sole and exclusive liability, and CITY's sole and exclusive remedy, for the breach of the above warranties. Intermedix shall have no obligation to replace any defective Product Unit which is not returned to Intermedix immediately following delivery or which has failed because of accident, abuse or misapplication.

**Schedule 2.01**  
**Early Termination Fee**

The Initial Term Early Termination Payments with respect to each Product Unit are as follows:

Period	Amount
(1) For an Early Termination during the first 18 months from the beginning of the TripTix Term:	\$2,750
(2) For an Early Termination during the remainder of the Term:	\$--0—

**Schedule 2.02**  
**Third-Party Intellectual Property Royalty Payments**

**In addition to the other compensation required under this Addendum, Third-Party Intellectual Property Payments shall be made as follows:**

**Licensing/Royalty agreement to be executed between CITY and the manufacturer of CITY's defibrillating equipment when the manufacturer has cleared the Product Unit for direct interface between their equipment and Intermedix provided data devices.**

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