

## **HEALTHCARE AUTOMATED RECEIVABLES SERVICES**

### **TERMS AND CONDITIONS**

*These Terms and Conditions describe the Service you have selected and set forth provisions governing your use of this Service. These Terms and Conditions are incorporated into and part of the Cash Management Services Master Agreement. By using this Service, you agree to be legally bound by these Terms and Conditions and the Cash Management Services Master Agreement.*

#### **BACKGROUND**

You regularly receive certain invoices and remittances from individuals and entities via the United States Postal Service for healthcare services you provide, and the remitted invoices are accompanied by payment in the form of a draft (check), a money order or an authorization to charge a credit card account, as indicated on the invoice ("Remittances"). You also receive certain documents, referred to as an Explanation of Benefits or "EOB" from health insurance companies and other third party payers (collectively "Healthcare Payers") that describe the payment decisions made by a payer and the amount paid by such payer for the health care services you have provided. You have requested that we provide certain services in connection with the Remittances and EOBs (the "Services"), as more fully described in this Agreement and the Exhibits and Schedules attached hereto. You are sometimes referred to herein as the "Customer" and we are sometimes referred to herein as "Fulton". Now therefore, for good and valuable consideration the parties intending to be legally bound, agree as follows:

#### **1. Definitions.**

- (a) "Administrator(s)" means the User(s) designated by you who are responsible for administering the Hosted Service and who are issued an Administrator login by us or the Third Party Service Provider.
- (b) "Affiliates" means any entity that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with a party to this Agreement, by way of majority voting equity ownership.
- (c) "Agreement" means these terms and conditions, together with any and all Order Forms referencing these terms and conditions, the schedules attached hereto and any other statements of work, exhibits or appendices thereto, whether attached or incorporated by reference.
- (d) "ASP" – Application Service Provider, a business model where a vendor hosts a vendor provided application in a secured data center to allow a client to utilize the application to conduct a business process on the hosting site.
- (e) "Business Associate Agreement" means the contract between you and us under which we provide you certain assurances in accordance with the Health Insurance Portability and Accountability Act, as amended from time to time ("HIPAA"), to protect the privacy and security of protected health information that you have disclosed to us in the course of perform our obligations under this agreement
- (f) "Chronic Outage" means any outage the characteristics of which resemble a previous outage or severity level. For example, three (3) severity 1 outages within a one (1) month period would be considered a chronic outage.

- (g) “*Customer Data*” means all electronic data or information submitted by you or your Affiliates to and stored by the Hosted Service.
- (h) “*Documentation*” means the reference, administrative, and user manuals provided by us or the Third Party Service Provider to you with the Hosted Service, which may be updated from time to time, but excluding any sales or marketing materials.
- (i) “*Electronic Communications*” means any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically received and/or transmitted through the Hosted Service.
- (j) “*Effective Date*” means the date on which the Agreement is signed by the last party to sign on the signature page.
- (k) “*EOB*” means Explanation of Benefits, a document describes the payment decision from Healthcare Payers that pays the claims submitted by a healthcare provider.
- (l) “*ERA*” – Electronic Medical Remittance
- (m) “*Errors*” means the Software/hardware system that fails to operate in conformance with the Documentation.
- (n) “*Interface*” means a program or object that creates a data file or other medium to exchange information with another system or application.
- (o) “*ERA*” – Electronic Remittance Advice is an electronic document that describes the payment decision from a payer to claims from a healthcare provider in the standard electronic 835 EDI format.
- (p) “*OCR*” – A software program that will automatically read the content from a scanned image of a paper document.
- (q) “*Order Form*” means our ordering document, renewal notification or order form in the name of and executed by you or, if applicable, its Affiliate, and accepted by us which specifies the Hosted Service and implementation services to be provided by us subject to the terms of this Agreement.
- (r) “*Severity Levels*” (which may also be referred to as “*Priorities*”). The three severity levels are defined below:
  - i. “*Severity 1*”: A type of Error that: (1) renders the entire or any part of the Software inoperative; or (2) causes the Software to fail catastrophically. No workaround exists or the available workaround is unacceptable due to its operational impact on you or your business.
  - ii. “*Severity 2*”: A type of Error that significantly degrades performance of the Software or materially restricts your use of the Software.
  - iii. “*Severity 3*”: A type of Error that causes only minor impact of the use of the Software/hardware.

- (s) *"Software"* means the software programs that are provided by a third party and that are hosted and made available to you as part of the Services under this Agreement, including all updates and documentation. Non-hosted Software means the software programs required to reside on your servers that allow access to the Software and Services.
- (t) *"Third Party Service Provider"* means the third party engaged by us to provide the Hosted Services and Software.
- (u) *"Users"* means individuals who are authorized by you to use the Hosted Service, and who have been supplied user identifications and passwords by you.
- (v) *"Workaround"* means a change in the procedures followed or data supplied to avoid an error without materially impairing performance of or access to the Customer Data and shall include Third Party Service Provider's obligation to use continuous work efforts (7 day/24 hours) to resolve and correct Severity 1 and Severity 2 Errors, defect or nonconformity once notified by you.

## 2. Services.

- (a) Description of Hosted Services. Throughout the Term, and subject to payment by you, we will provide you with access to (i) the business application branded as a content management system provided by a third-party ASP service used to capture EOB/ERA/Self Pay Data, process paper EOB documents from payers through an OCR process, reconcile the EOB/ERA data with payments received from your patients and provide those services set forth on Exhibit 1, and (ii) updates and upgrades as they are generally made available to us by our Third Party Service Provider, provided however that certain upgrades or updates may require additional Service Fees (defined in Section 6).
- (b) Your Responsibilities. You are responsible for all activities that occur under Your User accounts. You shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Software, and to notify us promptly of any such unauthorized use; (iii) comply with applicable local, state, federal, and foreign laws in using the Software, and (iv) any other responsibilities set forth on Exhibit 1. You acknowledge that you are a covered entity as such term is defined in HIPAA, and you must enter into a Business Associate Agreement with us. DSL, cable or another high speed Internet connection is required for proper transmission of the Hosted Service. You are responsible for procuring and maintaining the network connections and all software and equipment that may be necessary to connect the your network to the Hosted Service, including, but not limited to, "browser" software that supports protocols utilized by the Hosted Service, and for obtaining and maintaining File Transfer Protocol ("FTP") applications that support encryption services. We assume no responsibility for the reliability or performance of any computer networks, connections, or systems not owned or operated by us.
- (c) Use Guidelines. You shall use the Hosted Services for your internal business purposes as contemplated by this Agreement. You are responsible for all activities conducted by your Users and for your Users' compliance with this Agreement, including the content of all Customer Data. You will notify us immediately if a User should no longer have access to the Hosted Services. You and your Users will comply with all applicable local, state, federal, and foreign laws, treaties, regulations, and conventions in connection with its use of the Hosted Service, including without

limitation those related to privacy, electronic communications and anti-spam legislation. You will not: (i) sell, lease, license or sublicense the Hosted Service; (ii) introduce into or transmit through the Hosted Service any virus, worm, trap door, back door, and other harmful or malicious code, files, scripts, agents, or programs; (iii) transmit or store infringing material in the Hosted Service; and (iv) send any Electronic Communication from the Hosted Service that is unlawful, harassing, libelous, defamatory or threatening. Except as permitted by this Agreement, no part of the Hosted Service may be copied, reproduced, distributed, republished, displayed, posted or transmitted in any form or by any means. You shall not do any “mirroring” or “framing” of any part of the Hosted Service, or create Internet links to the Hosted Service which include log-in information, user names, passwords, and/or secure cookies.

- (d) Users, Passwords, Access, and Notification. You, through your Administrator, shall authorize access to and assign unique passwords and user names up to the number of Users. User logins are for designated Users and cannot be shared or used by more than one User. You will be responsible for the confidentiality and use of User’s passwords and user names. You will also be responsible for all Electronic Communications, including those containing business information, account registration, account holder information, financial information, Customer Data, and all other data of any kind contained within emails or otherwise entered electronically through the Hosted Service or under your account. We will act as though any Electronic Communications it receives under your passwords, User name, and/or account number will have been sent by you. You shall use commercially reasonable efforts to prevent unauthorized access to or use of the Hosted Service and shall promptly notify us of any unauthorized access or use of the Hosted Service and any loss or theft or unauthorized use of any User’s password or name and/or Hosted Service account numbers.
  - (e) Third Party Products and Hosted Services. We offer the Hosted Services through a Third Party Service Provider. You acknowledge and understand that the use of such Third Party Applications, Software and the Hosted Services shall be subject to separate terms and conditions by and between us and the Third Party Service Provider. We do not warrant any such Third Party Applications, Software or Service. If you install or enable Software to use the Hosted Service, you agree that Fulton may allow such Third Party Service Provider to access Customer Data as required for the interoperation of such Software with the Hosted Service. You also authorize Fulton to provide the Third Party Service Provider information Fulton receives regarding payments received by you from Healthcare Payers in order for the Third Party Service Provider to perform certain reconciliation services and for us to provide the Services under this Agreement. Finally, the continuing availability of the Third Party Hosted Services and Software is subject to the continued effectiveness and terms of the contract between us and the Third Party Service Provider.
  - (f) Customer Support. As part of the Hosted Service, the Third Party Service Provider will provide you with Documentation and other online resources to assist you in your use of the Hosted Service. During the Term of this Agreement, the Third Party Provider shall provide you with support services (“Support”). Support includes notification of any Errors in the Software; online and telephone technical support services 5 days a week during normal business hours; and Error correction for those same versions, with the level of effort commensurate with the severity of the Error.
3. Additional Services. In addition to the Hosted Services provided for hereunder, you will also receive the following Services:
- i. Lockbox Service in accordance with the Lockbox Service Terms and Conditions;
  - ii. ACH Origination Service in accordance with the ACH Originations Service Terms and Conditions; and

iii. Merchant Services in accordance with the Merchant Agreement.

4. Term. The initial term of this Agreement will commence on the Effective Date (“Initial Term”), and will automatically renew for successive one-year terms from the date of the contract anniversary (each, a “Renewal Term”) unless either party notifies the other party, in writing, at least thirty (30) days prior to the end of the term that it intends to terminate the Agreement at the end of the term. The Initial Term and any Renewal Term shall collectively be referred to herein as the “Term.”
5. Termination.
  - (a) Both parties may terminate this Agreement for cause in the event the other party: (i) breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of the same, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. In case of failure to pay Service Fees based on the requirements mentioned in Section 6, the cure must be accomplished within fifteen (15) days after receiving the written notice.
  - (b) Either party may terminate this Agreement without cause and without penalty by writing to notify the other party ninety (90) days prior to the termination date.
  - (c) You shall pay all undisputed amounts due and owing through the termination date. Upon termination, the Third Party Service Provider may assist you in transitioning Customer Data to another vendor, provided that you pay the costs associated with such transition.
6. Fees and Payment. The fees to be paid by you for the Hosted Services are specified in Exhibit 2 (“Service Fees”). We may increase the price at any time during the term, but we shall provide at least thirty (30) days written notice prior to any fee increase taking effect. Payment for the Services and any taxes due must be made in accordance with the terms of the Cash Management Master Services Agreement.
7. Reservation of Rights. You acknowledge and agree that the Hosted Services contains proprietary and confidential information that is protected by applicable intellectual property and other laws. You further acknowledges and agrees that information presented to you, including but not limited to the Documentation, in connection with the use of the Hosted Services may be protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws.
8. Customer Data. You hereby grant to us and the Third Party Service Provider, a non-exclusive, non-transferable, non-assignable, non-sublicensable right and license to use the Customer Data solely for the limited purpose of, and solely as necessary for, performing our obligations hereunder for the benefit of you. We shall not use the Customer Data for the benefit of any other customer of ours, or for any other purpose, without your prior written approval. Subject to the rights granted in this Agreement, you retain all right, title and interest in and to the Customer Data provided to us hereunder, and all intellectual property rights therein, and we acknowledges that we neither own nor acquire any additional rights in and to the Customer Data not expressly granted by this Agreement.
9. General Warranties.
  - (a) Each party represents and warrants: (i) that it has the legal power to enter into this Agreement, (ii) that it is a duly organized, validly existing and in good standing and has all necessary power and authority to enter into this Agreement and any other agreements contemplated hereunder

and to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby.

- (b) We warrant and represent that our performance under this Agreement shall comply with all applicable federal and state laws, including without limitation the Health Insurance Portability and Accountability Act (HIPAA), as amended by the Health Insurance Technology for Economic and Clinical Health Act (HITECH), and any regulations and guidance promulgated thereunder (collectively referred to herein as HIPAA) and any state information privacy and security laws. Accordingly, we will enter into a separate Business Associate Agreement with you.
10. Disclaimer. WE DO NOT WARRANT THAT YOUR USE OF THE SOFTWARE OR SERVICES WILL BE ERROR-FREE, UNINTERRUPTED OR FREE FROM UNAUTHORIZED ACCESS. THE EXPRESS WARRANTIES IN SECTIONS 9(a) and 9(b) ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SOFTWARE AND SERVICES, AND WE EXPRESSLY DISCLAIM ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. WITHOUT LIMITING THE FOREGOING, YOU RECOGNIZE THAT WE DO NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE SOFTWARE AND SERVICES. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET AND TELECOMMUNICATIONS SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT USERS' CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF) OR TO THE TELECOMMUNICATIONS NETWORKS (OR PORTIONS THEREOF). ALTHOUGH WE WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ALL ACTIONS WE DEEM APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, WE CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, WE DISCLAIM ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.
11. Limitations of Liability.
- (a) YOU AGREE THAT THE CONSIDERATION WHICH WE ARE CHARGING HEREUNDER DOES NOT INCLUDE CONSIDERATION FOR ASSUMPTION BY US OF THE RISK OF YOUR INCIDENTAL OR CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR LOST PROFITS OR REVENUE OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, COST OF COVER, SPECIAL, RELIANCE OR EXEMPLARY DAMAGES, OR INDIRECT DAMAGES OF ANY TYPE OR KIND HOWEVER CAUSED, WHETHER FROM BREACH OF WARRANTY, BREACH OR REPUDIATION OF CONTRACT, NEGLIGENCE, OR ANY OTHER LEGAL CAUSE OF ACTION FROM OR IN CONNECTION WITH THIS AGREEMENT (AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES TO THE MAXIMUM EXTENT PERMITTED BY LAW).
  - (b) EXCEPT WITH REGARD TO YOUR OBLIGATIONS TO PAY THE SERVICE FEES REQUIRED UNDER THIS AGREEMENT AND FOR CLAIMS BROUGHT UNDER SECTION 12 (INDEMNIFICATION), THE MAXIMUM LIABILITY OF EITHER PARTY TO THE OTHER OR ANY THIRD PARTY WHATSOEVER ARISING OUT OF OR IN THE CONNECTION WITH THIS AGREEMENT, INCLUDING THE USE OR OTHER DEPLOYMENT OF THE HOSTED SERVICE, WHETHER SUCH LIABILITY ARISES

FROM ANY CLAIM BASED ON BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, STATUTORY DUTY, OR OTHERWISE, SHALL IN NO CASE EXCEED THE EQUIVALENT OF SIX (6) MONTHS OF SERVICE FEES FOR THE HOSTED SERVICE THAT IS THE SUBJECT OF THE CLAIM.

- (c) THE PURPOSE OF THIS SECTION 11 IS TO LIMIT THE POTENTIAL LIABILITY OF THE PARTIES ARISING FROM THIS AGREEMENT. THE FOREGOING LIMITATIONS IN THIS SECTION WILL APPLY EVEN IF YOUR REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS SET FORTH IN THIS SECTION ARE INTEGRAL TO THE AMOUNT OF SERVICE FEES CHARGED FOR THE HOSTED SERVICE TO YOU.

12. Indemnification.

- (a) Indemnification by Fulton. Subject to this Agreement, we agree to defend, indemnify and hold you and your Affiliates, and their respective shareholders, employees, independent contractors and authorized agents (the "Customer Indemnitees") harmless from and against any Losses arising out of or relating, directly or indirectly, from any material breach of this Agreement by us, except to the extent that any of the foregoing arises out of or results from any Customer Indemnitee's negligence, willful misconduct or breach of this Agreement. "Losses" means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers. The foregoing obligations are conditioned on the following: (i) we are promptly notified of the claim; (ii) we receive reasonable cooperation from you in connection with the defense of the claim; and (iii) we have the opportunity to assume sole control over the defense and all negotiations for a settlement or compromise of the claim. You will not be responsible for any admission or settlement you do not approve in writing. You may choose to be represented by your own counsel (at your expense).
- (b) Indemnification by You. Subject to this Agreement, you agree to defend, indemnify and hold us, our Affiliates, subsidiaries and customers, and their respective shareholders, employees, independent contractors and agents (the "Fulton Indemnitees"), harmless from and against any Losses arising out of or relating, directly or indirectly, from (i) claims that the Customer Data or your unauthorized use of the Hosted Services infringes any third party copyright, patent, trademark or other proprietary right; or (ii) any material breach of this Agreement by you, except to the extent that any of the foregoing arises out of or results from any Fulton Indemnitee's negligence, willful misconduct or breach of this Agreement; provided that: (i) you are promptly notified of the claim; (ii) you receive reasonable cooperation from us in connection with the defense of the claim; and (iii) you have the opportunity to assume sole control over the defense and all negotiations for a settlement or compromise of the claim. We will not be responsible for any admission or settlement it does not approve in writing. We may choose to be represented by our own counsel (at our expense). You will not enter into any settlement or other disposition that requires payment or money or admission by us without our consent.

13. Survival. In addition to the survival provision in the Master Agreement, the provisions of Sections 1, 5(c), 6, 7, 8, 11, 12, and 13 of these Terms and Conditions shall survive any termination of the Hosted Services.

14. *Binding Agreement.* This Agreement forms a binding contract between you and us and you agree that unless explicitly stated otherwise, any updates or enhancements to the Hosted Service that are made available to you, and/or any new Hosted Service(s) subsequently purchased by you under an Order Form will be subject to this Agreement.

## **EXHIBIT 1**

### **Services**

#### 1. Services Provided.

(a) Fulton's Third Party Third Party Service Provider will:

- (i) procure, install and maintain any necessary hardware and software at the ASP hosting site for the production of EOB data capture operation, ERA processing, Self-Pay Processing, Re-association, Data Transmission, Digital Archive, Secondary processing, and Denial Management;
- (ii) setup and maintain the secure FTP (SFTP) data communications between Customer and Third party Service Provider ASP hosting site, provided that it is Customer's responsibility to connect to the SFTP server.

#### 2. Description of Services

Subject to the Customer's compliance with the terms of this Agreement, Fulton, through its Third Party Service Provider will provide the following:

#### 3. Operations (Paper EOB Process)

- (a) Download images – download the images scanned at Customer lockbox sites to the Third Party Service Provider ASP Data Center and will check via a reconciliation procedure established to ensure the integrity of the image file transmission.
- (b) Sort – AutoSort module will sort images received at the ASP Data Center. Payer EOB's will be identified and sent to the OCR system. Other EOBs will be sent to a default folder and held for Key from Image.
- (c) OCR – After Sorting, EOB images will be sent to the OCR engine for data extraction.
- (d) Key from Image – Data from the EOBs will be entered manually via the Key from Image module
- (e) OCR QA and Data Completion – Third Party Service Provider will send data extracted from OCR to Edit/Correction stations for review and edit to ensure data accuracy.
- (f) EDI Output – 835 outputs would be generated at ASP Data Center after OCR QA.
- (g) Image Index Data Output – indexing data for images will be sent to the imaging system for storage and retrieval.
- (h) Output Data Batching – Third Party Service Provider will collect and group EDI output files into batches for the final upload to the Customers.
- (i) Output Data and Images Upload – Third Party Service Provider will ensure that the final upload of extracted data and the associated images are sent to Customer site as negotiated on a per Customer basis.

- (j) Billing Data Upload – In the event that Customer provides billing data, the Third Party Service Provider will ensure that all patient-billing data that is required for external validation to the ASP Data Center is downloaded on a regular basis.
- (k) Third Party Service Provider – will perform data completion for the Customer.
- (l) Third Party Service Provider – will perform manual key from image data entry for non-OCRed EOBs for the Customer
- (m) Third Party Service Provider – will identify and list denied claims from remittance files as the zero-paid claims for the Customer.
- (n) Third Party Service Provider – will provide Secondary Billing opportunities for the Customer contingent upon the receiving of a billing file with accurate secondary payer information included from the Customer.
- (o) Third Party Service Provider – will identify mis-matches between remits and claims and between remits and payments.
- (p) Third Party Service Provider – will parse and render 835 received into patient level EOB's and displayable in the Web Portal.
- (q) All images will be stored online for seven (7) years.

#### 4. Security.

All data transmissions between the Hosting Data Center and Fulton and its Customers, or their representatives or agents, shall be encrypted using industry-standard encryption methods.

#### 5. Training.

Fulton will provide you with training regarding the Services, which may be in person, online or in documentation form.

#### 6. Customer Responsibilities.

- (a) Assign responsible personnel to work with Third Party Service Provider team.
- (b) Cooperate with Third Party Service Provider to provide business rules and other appropriate information and or files.
- (c) Provide prompt assistance in testing the ASP hosting system and other data transmissions.
- (d) Provide Internet bandwidth for the customer's facility.