EXHIBIT C

CORPORATE INTEGRITY AGREEMENT
BETWEEN THE
OFFICE OF INSPECTOR GENERAL
OF THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
EMERGENCY PHYSICIANS BILLING SERVICE, INC.

I. PREAMBLE

Medical Consultants, Inc., d/b/a Emergency Physicians Billing Service, Inc. ("EPBS") hereby enters into this Corporate Integrity Agreement ("CIA") with the Office of Inspector General ("OIG") of the United States Department of Health and Human Services ("HHS") to ensure compliance by its employees, as well as all third parties with whom EPBS may choose to engage to act as billing or coding agents or consultants for EPBS, with the requirements of Medicare, Medicaid and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) (hereinafter collectively referred to as the "Federal health care programs"). EPBS's compliance with the terms and conditions in this CIA shall constitute an element of EPBS's present responsibility with regard to participation in the Federal health care programs. Contemporaneously with this CIA, EPBS is entering into a Settlement Agreement with the United States, and this CIA is incorporated by reference into the Settlement Agreement.

II. RELATIONS WITH J.D. MCKEAN

A. Stock Ownership

As set forth in the Settlement Agreement into which this CIA is incorporated (the "Settlement Agreement"), J.D. McKean, M.D. ("McKean") has agreed that on or before December 31, 1999, the McKean Family Trust will place a maximum of 40% of the outstanding shares of EPBS stock in a trust, as provided by the OIG by letter to Todd Taylor dated May 21, 1999. All other shares of EPBS stock, except for those shares

already held by person other than McKean or the McKean Family Trust as of June 10, 1999, shall be sold to parties unrelated to McKean and the McKean Family Trust, except that Bobby Asbell may receive up to 3% of EPBS stock.

EPBS shall not issue any shares of EPBS stock to McKean or to any person related to McKean. In the event that EPBS learns that McKean, the McKean Family Trust, or any person related to McKean, including Bobby Asbell, owns or controls any shares of EPBS stock, other than as permitted above, EPBS shall report such ownership or control to OIG within ten (10) days after learning of such ownership or control.

B. Other Relations with McKean

Under the terms of the Settlement Agreement, McKean has agreed to resign as Chief Executive Officer of EPBS, and from any other positions at EPBS. EPBS may not engage McKean in any employment, agency, financial, or management relationship while McKean is excluded from participation in the Federal health care programs, except as set forth in Section II.C, below.

C. Exceptions

Excepted from the above prohibition against any financial relationship between EPBS and McKean are the following:

(1) EPBS may make payments pursuant to any loan agreement with McKean or the McKean Family Trust entered on or before June 10, 1999;

(2) EPBS may enter into future loan agreements with McKean or the McKean Family Trust for the sole purpose of funding settlement payments described in Paragraph 1 of the Settlement Agreement. Such loan agreements shall consist of commercially reasonable terms and any interest rate applied to such loans shall not exceed the market rate of interest.

(3) McKean or the McKean Family Trust may make payments on behalf of EPBS in satisfaction of the Settlement Agreement into which this CIA is incorporated.

(4) EPBS may pay to McKean, for a period of no longer than three (3) years from McKean's resignation from EPBS, severance benefits at a level not to exceed that of his current salary and benefits from EPBS. Such severance benefits shall not be paid from funds received directly or indirectly from any Federal or state health care program.

(5) EPBS may continue to lease properties leased from McKean on the date of execution of the Settlement Agreement. Such leases may be renewed, with terms and rates similar to those in existence on the date of execution of the Settlement Agreement.

(6) McKean may continue to license software to EPBS that are licensed to EPBS on the date of execution of the Settlement Agreement.

(7) McKean may maintain personal and corporate offices, unrelated to EPBS, in buildings owned by McKean or the McKean Family Trust which are also occupied by EPBS. McKean may not utilize or share telephone services (other than hardware telephone lines and cables), or other services utilized or operated by EPBS. McKean shall have 120 days after the date of this CIA to relocate his current office to an office segregated from offices occupied by EPBS.

(8) EPBS may continue to maintain accounts with Frontier State Bank, which is owned by McKean, so long as such accounts and relationships are maintained in compliance with applicable banking statutes, rules, and regulations.

III. TERM OF THE CIA

The period of the compliance obligations assumed by EPBS under this CIA shall be five (5) years from the effective date of this CIA (unless otherwise specified). The effective date of this CIA will be the date on which the final signatory of this CIA executes this CIA (the "effective date").

IV. CORPORATE INTEGRITY OBLIGATIONS

EPBS shall establish a compliance program that includes the following elements.

A. Compliance Officer and Compliance Committee

Within 120 days after the effective date of this CIA, EPBS shall appoint an individual to serve as Compliance Officer, who shall be responsible for developing and implementing policies, procedures, and practices designed to ensure compliance with the requirements set forth in this CIA and with the requirements of the Federal health care programs. The Compliance Officer shall be a member of senior management of EPBS, shall make regular (at least quarterly) reports regarding compliance matters directly to the CEO and/or to the Board of Directors of EPBS, and shall be authorized to report to the Board of Directors at any time. The Compliance Officer shall be responsible for

monitoring the day-to-day activities engaged in by EPBS to further its compliance objectives as well as any reporting obligations created under this CIA. In the event a new Compliance Officer is appointed during the term of this CIA, EPBS shall notify the OIG, in writing, within fifteen (15) days of such a change.

Within 120 days after the effective date of this CIA, EPBS shall also appoint a Compliance Committee. The Compliance Committee shall, at a minimum, include the Compliance Officer and any other appropriate officers as necessary to meet the requirements of this CIA within the provider's corporate structure (e.g., senior executives of each major department, such as billing, human resources, audit, and operations). The Compliance Officer shall chair the Compliance Committee and the Committee shall support the Compliance Officer in fulfilling his/her responsibilities.

B. Written Standards

1. *Code of Conduct.* Within 120 days of the effective date of this CIA, EPBS shall establish a Code of Conduct. The Code of Conduct shall be distributed to all employees, contractors or agents within 120 days of the effective date of this CIA. EPBS shall make the promotion of, and adherence to, the Code of Conduct an element in evaluating the performance of managers, supervisors, and all other employees. The Code of Conduct shall, at a minimum, set forth:

a. EPBS's commitment to full compliance with all statutes, regulations, and guidelines applicable to Federal health care programs, including its commitment to prepare and submit accurate billings consistent with Federal health care program regulations and procedures or instructions otherwise communicated by the Health Care Financing Administration ("HCFA") (or other appropriate regulatory agencies) and/or its agents;

b. EPBS's expectation that all of its employees, contractors and agents shall comply with all statutes, regulations, and guidelines applicable to Federal health care programs and with EPBS's own policies and procedures (including the requirements of this CIA);

c. EPBS's expectation that all of EPBS's employees, contractors and agents shall report suspected violations of any statute,

regulation, or guideline applicable to Federal health care programs or of EPBS's own policies and procedures;

d. the possible consequences to both EPBS and to any employee, contractor, or agent of failure to comply with all statutes, regulations, and guidelines applicable to Federal health care programs and with EPBS's own policies and procedures or of failure to report such non-compliance; and

e. the right of all employees, contractors and agents to use the confidential disclosure program, as well as EPBS's commitment to confidentiality and non-retaliation with respect to disclosures.

Within 120 days of the effective date of the CIA, each employee, contractor and agent shall certify, in writing, that he or she has received, read, understands, and will abide by EPBS's Code of Conduct. New employees, contractors and agents shall receive the Code of Conduct and shall complete the required certification within two (2) weeks after the commencement of their employment or contract or within 120 days of the effective date of the CIA, whichever is later.

EPBS will annually review the Code of Conduct and will make any necessary revisions. The amendments shall be distributed to all employees, agents and contractors within thirty (30) days of initiating such a revision. Employees, contractors and agents shall certify on an annual basis that they have received, have read, understand and will abide by the Code of Conduct.

2. *Policies and Procedures.* Within 120 days of the effective date of this CIA, EPBS shall develop and effectively implement written Policies and Procedures regarding its commitment to accurate billings and submissions of claims consistent with the terms of this CIA, with all Federal and state statutes, regulations, policies, and procedures, and with the requirements of the Federal health care programs for the documentation and billing of medical services. The Policies and Procedures shall require specifically that all claims submitted to the Federal health care programs be properly supported by physician documentation of diagnosis, procedure, and medical necessity in the patient's medical record. The Policies and Procedures shall also ensure that reasonable efforts will be made to bill and collect deductibles and copayments where

necessary, and that all claims will be properly coded and not subject to unbundling,[1] upcoding,[2] or assumption coding.[3] The Policies and Procedures shall ensure compliance with all applicable Federal and state laws and regulations that pertain to proper collection practices. The Policies and Procedures shall also establish responsibility for the timely identification and resolution of overpayments, within the context of the contractual agreement with EPBS clients and in accordance with all applicable state escheat laws.

The Policies and Procedures shall ensure that individuals responsible for the coding and billing of claims for reimbursement from the Federal health care programs are aware of current coding issues and any changes in the coding regulations. Specifically, individuals responsible for the coding and billing of such claims should be made aware of CPT-4 coding and nomenclature changes that are made each year, and which may affect the appropriateness of coding and coding combinations. The Policies and Procedures shall also ensure that individuals responsible for the coding and billing of such claims are made especially aware of concerns about unbundling with respect to procedural and surgical services and the proper use of modifiers, as well as of the need for documented verification of services from the treating physician if a copy of the medical record is not available.

The Policies and Procedures shall contain guidance for physicians and other providers regarding their responsibilities as to documentation and coding, and that portion of the Policies and Procedures shall be distributed to each client physician or other provider on whose behalf EPBS files claims.

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1 The term "unbundling" refers to the inappropriate coding of a single procedure, such as a laboratory profile or single operative session, as a number of separate procedures.

2 The term "upcoding" refers to the coding of a service at a higher level of complexity than was actually performed or documented to obtain a higher level of reimbursement.

3 The term "assumption coding" refers to the coding of a diagnosis or procedure without supporting clinical documentation.

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The Policies and Procedures shall include disciplinary guidelines and methods for employees to make disclosures or otherwise report on compliance issues to EPBS management through the Confidential Disclosure Program required by section IV.E.

EPBS shall assess and update as necessary the Policies and Procedures at least annually and more frequently, as appropriate. A summary of the Policies and Procedures will be provided to OIG in the Implementation Report. The Policies and Procedures will be available to OIG upon request.

Within 120 days of the effective date of the CIA, the relevant portions of the Policies and Procedures shall be distributed to all appropriate employees, contractors and agents. Compliance staff or supervisors should be available to explain any and all policies and procedures.

C. Training and Education

1. *General Training*. Within 120 days of the effective date of this CIA, EPBS shall provide at least two (2) hours of training to each affected employee, contractor and agent. This general training shall explain EPBS's:

a. Corporate Integrity Agreement requirements;

b. Compliance Program (including the Policies and Procedures as they pertain to general compliance issues); and

c. Code of Conduct.

These training materials shall be made available to the OIG, upon request.

New employees shall receive the general training described above within thirty (30) days of the beginning of their employment or within 120 days after the effective date of this CIA, whichever is later. Each year, every affected employee, contractor and agent shall receive such general training on an annual basis.

2. *Specific Training*. Within 120 days of the effective date of this CIA, each employee who is involved directly or indirectly in the preparation or submission of claims for reimbursement (including, but not limited to, coding and billing) for any

EXHIBIT C

Federal health care programs shall receive at least eight (8) hours of training in addition to the general training required above. This training shall include a discussion of:

a. the submission of accurate bills for services rendered to Medicare and/or Medicaid patients;

b. policies, procedures and other requirements applicable to the documentation of medical records;

c. the personal obligation of each individual involved in the billing process to ensure that such billings are accurate;

d. applicable reimbursement rules and statutes;

e. the legal sanctions for improper billings; and

f. examples of proper and improper billing practices.

These training materials shall be made available to OIG, upon request. Persons providing the training must be knowledgeable about the subject area.

Affected new employees, contractors and agents shall receive this training within thirty (30) days of the beginning of their employment or within 120 days of the effective date of this CIA, whichever is later. If a new employee, contractor or agent has any responsibility for the preparation or submission of claims and/or the assignment of procedure or billing codes prior to completing this specific training, an EPBS employee, contractor or agent who has completed the substantive training shall review all of the untrained person's work regarding the preparation or submission of claims and/or the assignment of procedure or billing codes.

Each year, every affected employee, contractor and agent shall receive such specific training on an annual basis.

3. *Certification.* Each affected employee, contractor and agent shall certify, in writing, that he or she has attended the required training. The certification shall specify the type of training received and the date received. The Compliance Officer shall

retain the certifications, along with specific course materials. These shall be made available to OIG upon request.

D. Review Procedures

EPBS shall retain an entity, such as an accounting, auditing or consulting firm (hereinafter "Independent Review Organization"), to perform agreed upon procedures (negotiated between EPBS and the Independent Review Organization) to assist EPBS in assessing the adequacy of its billing and compliance practices pursuant to this CIA. This shall be an annual requirement and shall cover a twelve (12) month period. The Independent Review Organization must have expertise in the billing, coding, reporting and other requirements of the Federal health care programs from which EPBS seeks reimbursement. The Independent Review Organization must be retained to conduct the audit of the first year within 120 days of the effective date of this CIA.

The Independent Review Organization will conduct two separate engagements. One will be an analysis of EPBS's submission of claims to the Federal health care programs to assist the EPBS and OIG in determining EPBS's compliance with all applicable statutes, regulations, and directives/guidance ("billing engagement"). The second engagement will determine whether EPBS is in compliance with this CIA ("compliance engagement").

1. *Billing Engagement.* The billing engagement shall consist of a review of a statistically valid sample of claims that can be extrapolated to the population of claims for the relevant period. The sample size shall be determined through the use of a probe sample. The probe sample must contain at least thirty (30) sample units and cannot be used as part of the full sample. The full sample must contain a sufficient number of units so that when the sample results are extrapolated to the population of claims, the projection provides a minimum ninety (90) percent confidence level and a minimum precision of plus or minus twenty-five (25) percent of the point estimate (i.e., the upper and lower bounds of the ninety (90) percent confidence interval shall not exceed 125% and shall not fall below 75% of the median of the confidence interval, respectively). Both the probe sample and the full sample must be selected through random numbers. EPBS shall use OIG's Office of Audit Services Statistical Sampling Software, also known as "RAT-STATS," which is available through the Internet at "www.hhs.gov/progorg/oas/ratstat.html".

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Each annual billing engagement analysis shall include the following components in its methodology:

a. Billing Engagement Objective: A statement stating clearly the objective intended to be achieved by the billing engagement and the procedure or combination of procedures that will be applied to achieve the objective.

b. Billing Engagement Population: Identification of the population, which is the group about which information is needed. Explain the methodology used to develop the population and provide the basis for this determination.

c. Sources of Data: A full description of the source of the information upon which the billing engagement conclusions will be based, including the legal or other standards applied, documents relied upon, payment data, and/or any contractual obligations.

d. Sampling Unit: A definition of the sampling unit, which is any of the designated elements that comprise the population of interest.

e. Sampling Frame: Identification of the sampling frame, which is the totality of the sampling units from which the sample will be selected.

The billing engagement shall provide:

a. findings regarding EPBS's billing and coding operation (including, but not limited to, the operation of the billing system, strengths and weaknesses of this system, internal controls, effectiveness of the system);

b. findings regarding whether EPBS is submitting accurate claims for services billed to the Federal health care programs;

c. findings regarding EPBS's procedures to correct inaccurate billings or codings to the Federal health care programs; and

d. findings regarding the steps EPBS is taking to bring its operations into compliance or to correct problems identified by the audit.

A complete copy of the Independent Review Organization's billing engagement shall be included in each of EPBS's Annual Reports to OIG.

2. *Compliance Engagement.* The compliance engagement shall provide findings regarding whether EPBS's program, policies, procedures, and operations comply with the terms of this CIA. This engagement shall include section by section findings regarding the requirements of this CIA.

A complete copy of the Independent Review Organization's compliance engagement shall be included in each of EPBS's Annual Reports to OIG.

3. *Disclosure of Overpayments and Material Deficiencies.* If, as a result of these engagements, EPBS or the Independent Review Organization identifies any billing, coding or other policies, procedures and/or practices on the part of EPBS that result in an overpayment to any of EPBS's clients, within thirty (30) days of discovering the deficiency or overpayment EPBS shall notify the payor(s) (e.g., Medicare fiscal intermediary or carrier) and all affected EPBS clients. Within sixty (60) days of discovering the deficiency or overpayment (or such additional time as may be agreed to by the payor) EPBS shall take remedial steps to correct the problem, including preventing the overpayment or deficiency from recurring. Each notice to the payor(s) shall include:

a. a statement that the overpayment is being reported pursuant to this CIA;

b. a description of the complete circumstances surrounding the overpayment;

c. the methodology by which the overpayment was determined;

d. the amount of the overpayment, broken down by each EPBS client (identified by name and provider number) affected; and

e. any claim-specific information used to determine the overpayment (e.g., beneficiary health insurance number, claim number, service date, and payment date).

The notice to each affected EPBS client shall include:

a. a description of the complete circumstances surrounding the overpayment or deficiency;

b. the methodology by which the overpayment or deficiency was determined;

c. the amount of the overpayment received by that particular EPBS client; and

d. any claim-specific information used to determine the overpayment (e.g., beneficiary health insurance number, claim number, service date, and payment date).

If EPBS determines an overpayment represents a material deficiency, contemporaneous with EPBS's notification to the payor as provided above, EPBS shall also notify OIG of:

a. a complete description of the material deficiency;

b. amount of overpayment due to the material deficiency, broken down by each EPBS client (identified by name and provider number) affected;

c. EPBS's action(s) to correct and prevent such material deficiency from recurring; and

d. the payor's name, address, and contact person where the notice of overpayment was sent.

For purposes of this CIA, an "overpayment" shall mean the amount of money an EPBS client has received in excess of the amount due and payable under the Federal

health care programs' statutes, regulations or program directives, including carrier and intermediary instructions.

For purposes of this CIA, a "material deficiency" shall mean anything that involves: (i) a substantial overpayment or improper payment relating to the Medicare and/or Medicaid programs; (ii) conduct or policies that clearly violate the Medicare and/or Medicaid statutes, regulations or directives issued by HCFA and/or its agents; or (iii) serious quality of care implications for Federal health care program beneficiaries or recipients. A material deficiency may be the result of an isolated event or a series of occurrences.

4. *Verification/Validation*. In the event that the OIG determines that it is necessary to conduct an independent review to determine whether or the extent to which EPBS is complying with its obligations under this CIA, EPBS agrees to pay for the reasonable cost of any such review or engagement by the OIG or any of its designated agents.

E. Confidential Disclosure Program

Within 120 days after the effective date of this CIA, EPBS shall establish a Confidential Disclosure Program, which must include measures (e.g., a toll-free compliance telephone line) to enable employees, contractors, agents or other individuals to disclose, to the Compliance Officer or some other person who is not in the reporting individual's chain of command, any identified issues or questions associated with EPBS's policies, practices or procedures with respect to the Federal health care programs, believed by the individual to be inappropriate. EPBS shall publicize the existence of the hotline (e.g., E-mail to employees or post hotline number in prominent common areas).

The Confidential Disclosure Program shall emphasize a non-retribution, non-retaliation policy, and shall include a reporting mechanism for anonymous, confidential communication. Upon receipt of a complaint, the Compliance Officer (or designee) shall gather the information in such a way as to elicit all relevant information from the individual reporting the alleged misconduct. The Compliance Officer (or designee) shall make a preliminary good faith inquiry into the allegations set forth in every disclosure to ensure that he or she has obtained all of the information necessary to determine whether a further review should be conducted. For any disclosure that is sufficiently specific so that it reasonably: (1) permits a determination of the appropriateness of the alleged improper

practice; and (2) provides an opportunity for taking corrective action, EPBS shall conduct an internal review of the allegations set forth in such a disclosure and ensure that proper follow-up is conducted.

The Compliance Officer shall maintain a confidential disclosure log, which shall include a record and summary of each allegation received, the status of the respective investigations, and any corrective action taken in response to the investigation.

F. Ineligible Persons

1. *Definition.* For purposes of this CIA, an "Ineligible Person" shall be any individual or entity who: (i) is currently excluded, suspended, debarred or otherwise ineligible to participate in the Federal health care programs; or (ii) has been convicted of a criminal offense related to the provision of health care items or services and has not been reinstated in the Federal health care programs after a period of exclusion, suspension, debarment, or ineligibility.

2. *Screening Requirements.* With the exceptions set forth in Section II.C, above, EPBS shall not hire or contract with any Ineligible Person. To prevent hiring or contracting with an Ineligible Person, EPBS shall screen all prospective employees and prospective contractors prior to hiring or entering into a contract with that person by (i) requiring prospective employees and contractors to disclose whether they are Ineligible Persons, and (ii) reviewing the General Services Administration's List of Parties Excluded from Federal Programs (available through the Internet at http://www.arnet.gov/epls) and the HHS/OIG Cumulative Sanction Report (available through the Internet at http://www.dhhs.gov/progorg/oig) (these lists and reports will hereinafter be referred to as the "Exclusion Lists").

3. *Review and Removal Requirement.* Within 120 days of the effective date of this CIA, EPBS will review its list of current employees and contractors against the Exclusion Lists. Thereafter, EPBS will review the list once semi-annually. If EPBS has notice that an employee or contractor has become an Ineligible Person, EPBS shall terminate its contract with that person, shall remove such person from responsibility for, or involvement with, EPBS's business operations related to the Federal health care programs, and shall remove such person from any position for which the person's salary or the items or services rendered, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal

funds at least until such time as the person is reinstated into participation in the Federal health care programs.

4. *Pending Charges and Proposed Exclusions.* If EPBS has notice that an employee or contractor is charged with a criminal offense related to any Federal health care program, or is suspended or proposed for exclusion during his, her or its employment or contract with EPBS, within ten (10) days of receiving such notice EPBS will suspend all contracts with that person, and will remove such person from responsibility for, or involvement with, EPBS's business operations related to the Federal health care programs until the resolution of such criminal action, suspension, or proposed exclusion.

G. Notification of Proceedings

Within thirty (30) days of discovery, EPBS shall notify OIG, in writing, of any ongoing investigation or legal proceeding conducted or brought by a governmental entity or its agents involving an allegation that EPBS has committed a crime or has engaged in fraudulent activities or any other knowing misconduct. This notification shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding. EPBS shall also provide written notice to OIG within thirty (30) days of the resolution of the matter, and shall provide OIG with a description of the findings and/or results of the proceedings, if any.

H. Reporting

1. *Credible Evidence of Misconduct.* If EPBS discovers credible evidence of misconduct from any source and, after reasonable inquiry, has reason to believe that the misconduct may violate criminal, civil, or administrative law concerning EPBS's practices relating to the Federal health care programs, then EPBS shall promptly report the probable violation of law to OIG. Defendants shall make this disclosure as soon as practicable, but, not later than thirty (30) days after becoming aware of the existence of the credible evidence of the probable violation. The EPBS's report to OIG shall include:

a. the findings concerning the probable violation, including the nature and extent of the probable violation;

b. EPBS's actions to correct such probable violation; and

c. any further steps it plans to take to address such probable violation and prevent it from recurring.

To the extent the misconduct involves an overpayment, the report shall include the information listed in section IV.D.3 regarding material deficiencies.

2. *Inappropriate Billing.* If EPBS discovers inappropriate or incorrect billing through means other than the Independent Review Organization's engagement, EPBS shall follow procedures in section IV.D.3 regarding overpayments and material deficiencies.

V. NEW LOCATIONS

In the event that EPBS purchases or establishes new business units after the effective date of this CIA, EPBS shall notify OIG of this fact within thirty (30) days of the date of purchase or establishment. This notification shall include the location of the new operation(s), phone number, fax number, Federal health care program identification number(s) (such as a PIN, or EDI, if any), and the corresponding payor(s) (contractor specific) that has issued each identification number. All employees at such locations shall be subject to the requirements in this CIA that apply to new employees (e.g., completing certifications and undergoing training).

VI. IMPLEMENTATION AND ANNUAL REPORTS

A. Implementation Report

Within one hundred fifty (150) days after the effective date of this CIA, EPBS shall submit a written report to OIG summarizing the status of its implementation of the requirements of this CIA. This Implementation Report shall include:

1. the name, address, phone number and position description of the Compliance Officer required by section IV.A;

2. the names and positions of the members of the Compliance Committee required by section IV.A;

3. a copy of EPBS's Code of Conduct required by section IV.B.1;

4. the summary of the Policies and Procedures required by section IV.B.2;

5. a description of the training programs required by section IV.C, including a description of the targeted audiences and a schedule of when the training sessions were held;

6. a certification by the Compliance Officer that:

a. the Policies and Procedures required by section IV.B have been developed, are being implemented, and have been made available to all pertinent employees, contractors and agents;

b. all employees, contractors and agents have completed the Code of Conduct certification required by section IV.B.1; and

c. all employees, contractors and agents have completed the training and executed the certification required by section IV.C.

7. a description of the confidential disclosure program required by section IV.E;

8. the identity of the Independent Review Organization(s) and the proposed start and completion date of the first audit; and

9. a summary of any personnel actions taken pursuant to section IV.F.

B. Annual Reports

EPBS shall submit to OIG an Annual Report with respect to the status and findings of EPBS's compliance activities.

The Annual Reports shall include:

1. any change in the identity or position description of the Compliance Officer and/or members of the Compliance Committee described in section IV.A;

2. a certification by the Compliance Officer that:

a. all employees, contractors and agents have completed the annual Code of Conduct certification required by section IV.B.1; and

b. all employees, contractors and agents have completed the training and executed the certification required by section IV.C;

3. notification of any changes or amendments to the Policies and Procedures required by section IV.B and the reasons for such changes (e.g., change in contractor policy);

4. a complete copy of the report prepared pursuant to the Independent Review Organization's billing and compliance engagement, including a copy of the methodology used;

5. EPBS's response/corrective action plan to any issues raised by the Independent Review Organization;

6. a summary of material deficiencies and reported throughout the course of the previous twelve (12) months pursuant to IV.D.3 and IV.H;

7. a report of the aggregate overpayments that have been returned to the Federal health care programs that were discovered as a direct or indirect result of implementing this CIA. Overpayment amounts should be broken down into the following categories: Medicare, Medicaid (report each applicable state separately) and other Federal health care programs;

8. a copy of the confidential disclosure log required by section IV.E;

9. a description of any personnel action (other than hiring) taken by EPBS as a result of the obligations in section IV.F;

10. a summary describing any ongoing investigation or legal proceeding conducted or brought by a governmental entity involving an allegation that EPBS has committed a crime or has engaged in fraudulent activities, which have been reported pursuant to section IV.G. The statement shall include a

description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation, legal proceeding or requests for information;

11. a corrective action plan to address the probable violations of law identified in section IV.H; and

12. a listing of all of the EPBS's locations (including locations and mailing addresses), the corresponding name under which each location is doing business, the corresponding phone numbers and fax numbers, each location's Federal health care program identification number(s) and the payor (specific contractor) that issued each identification number.

The first Annual Report shall be received by the OIG no later than one year and thirty (30) days after the effective date of this CIA. Subsequent Annual Reports shall be submitted no later than the anniversary date of the due date of the first Annual Report.

C. Certifications

The Implementation Report and Annual Reports shall include a certification by the Compliance Officer under penalty of perjury, that: (1) EPBS is in compliance with all of the requirements of this CIA, to the best of his or her knowledge; and (2) the Compliance Officer has reviewed the Report and has made reasonable inquiry regarding its content and believes that, upon such inquiry, the information is accurate and truthful.

VII. NOTIFICATIONS AND SUBMISSION OF REPORTS

Unless otherwise stated in writing subsequent to the effective date of this CIA, all notifications and reports required under this CIA shall be submitted to the entities listed below:

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OIG:

Civil Recoveries Branch - Compliance Unit
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services
Cohen Building, Room 5527
330 Independence Avenue, SW
Washington, DC 20201
Telephone: (202) 619-2078
Facsimile: (202) 205-0604

EPBS:

Judy Wilson
Compliance Officer
Emergency Physicians Billing Services, Inc.
3303 S. Meridian
Oklahoma City, OK 73119
Telephone: (405) 682-3303
Facsimile: (405) 682-3381

With copy to:

Ken Goodin
Chief Operating Officer
Emergency Physicians Billing Services, Inc.
3303 S. Meridian
Oklahoma City, OK 73119
Telephone: (405) 682-3303
Facsimile: (405) 682-3381

VIII. OIG INSPECTION, AUDIT AND REVIEW RIGHTS

In addition to any other rights OIG may have by statute, regulation, or contract, OIG or its duly authorized representative(s) may examine EPBS's books, records, and

other documents and supporting materials for the purpose of verifying and evaluating: (a) EPBS's compliance with the terms of this CIA; and (b) EPBS's compliance with the requirements of the Federal health care programs in which it participates. The documentation described above shall be made available by EPBS to OIG or its duly authorized representative(s) at all reasonable times for inspection, audit or reproduction. Furthermore, for purposes of this provision, OIG or its duly authorized representative(s) may interview any of EPBS's employees, contractors or agents who consent to be interviewed at the employee's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the employee, contractor or agent and OIG. EPBS agrees to assist OIG in contacting and arranging interviews with such employees, contractors and agents upon OIG's request. EPBS's employees may elect to be interviewed with or without a representative of EPBS present.

IX. DOCUMENT AND RECORD RETENTION

EPBS shall maintain for inspection all documents and records relating to reimbursement for claims submitted during the term of this CIA from the Federal health care programs, or to compliance with this CIA, one year longer than the term of this CIA (or longer if otherwise required by law).

X. DISCLOSURES

Subject to HHS's Freedom of Information Act ("FOIA") procedures, set forth in 45 C.F.R. Part 5, the OIG shall make a reasonable effort to notify EPBS prior to any release by OIG of information submitted by EPBS pursuant to its obligations under this CIA and identified upon submission by EPBS as trade secrets, commercial or financial information and privileged and confidential under the FOIA rules. EPBS shall refrain from identifying any information as trade secrets, commercial or financial information and privileged and confidential that does not meet the criteria for exemption from disclosure under FOIA.

XI. BREACH AND DEFAULT PROVISIONS

EPBS is expected to fully and timely comply with all of the obligations herein throughout the term of this CIA or other time frames herein agreed to.

EXHIBIT C

A. Stipulated Penalties for Failure to Comply with Certain Obligations

As a contractual remedy, EPBS and OIG hereby agree that failure to comply with certain obligations set forth in this CIA may lead to the imposition of the following monetary penalties (hereinafter referred to as "Stipulated Penalties") in accordance with the following provisions.

1. A Stipulated Penalty of $2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day, beginning 120 days after the effective date of this CIA and concluding at the end of the term of this CIA, EPBS fails to have in place any of the following:

a. a Compliance Officer;

b. a Compliance Committee;

c. written Code of Conduct;

d. written Policies and Procedures;

e. a training program; and

f. a Confidential Disclosure Program;

2. A Stipulated Penalty of $2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day EPBS fails meet any of the deadlines to submit the Implementation Report or the Annual Reports to the OIG.

3. A Stipulated Penalty of $2,000 (which shall begin to accrue on the date the failure to comply began) for each day EPBS:

a. hires or enters into a contract with an Ineligible Person, with the exceptions set forth in Section II.C above, after that person has been listed by a federal agency as excluded, debarred, suspended or otherwise ineligible for participation in the Medicare, Medicaid or any other Federal health care program (as defined in 42 U.S.C. § 1320a-7b(f)) (this Stipulated Penalty shall not be demanded for any time period during which EPBS can demonstrate that it did not discover the person's exclusion or other

ineligibility after making a reasonable inquiry (as described in section III.F) as to the status of the person);

b. employs or contracts with an Ineligible Person, with the exceptions set forth in Section II.C above, and that person: (i) has responsibility for, or involvement with, EPBS's business operations related to the Federal health care programs or (ii) is in a position for which the person's salary or the items or services rendered, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds (this Stipulated Penalty shall not be demanded for any time period during which EPBS can demonstrate that it did not discover the person's exclusion or other ineligibility after making a reasonable inquiry (as described in section III.F) as to the status of the person); or

c. employs or contracts with a person who: (i) has been charged with a criminal offense related to any Federal health care program, or (ii) is suspended or proposed for exclusion, and that person has responsibility for, or involvement with, EPBS's business operations related to the Federal health care programs (this Stipulated Penalty shall not be demanded for any time period before 10 days after EPBS received notice of the relevant matter or after the resolution of the matter).

4. A Stipulated Penalty of $1,500 (which shall begin to accrue on the date the EPBS fails to grant access) for each day EPBS fails to grant access to the information or documentation as required in section VIII of this CIA.

5. A Stipulated Penalty of $1,000 (which shall begin to accrue ten (10) days after the date that OIG provides notice to EPBS of the failure to comply) for each day EPBS fails to comply fully and adequately with any obligation of this CIA. In its notice to EPBS, the OIG shall state the specific grounds for its determination that the EPBS has failed to comply fully and adequately with the CIA obligation(s) at issue.

B. Payment of Stipulated Penalties

1. *Demand Letter.* Upon a finding that EPBS has failed to comply with any of the obligations described in section XI.A and determining that Stipulated Penalties are appropriate, OIG shall notify EPBS by personal service or certified mail of (a) EPBS's failure to comply; and (b) the OIG's exercise of its contractual right to demand payment

of the Stipulated Penalties (this notification is hereinafter referred to as the "Demand Letter").

Within fifteen (15) days of the date of the Demand Letter, EPBS shall either (a) cure the breach to the OIG's satisfaction and pay the applicable stipulated penalties; or (b) request a hearing before an HHS administrative law judge ("ALJ") to dispute the OIG's determination of noncompliance, pursuant to the agreed upon provisions set forth below in section XI.D. In the event EPBS elects to request an ALJ hearing, the Stipulated Penalties shall continue to accrue until EPBS cures, to the OIG's satisfaction, the alleged breach in dispute. Failure to respond to the Demand Letter in one of these two manners within the allowed time period shall be considered a material breach of this CIA and shall be grounds for exclusion under section XI.C.

2. *Timely Written Requests for Extensions*. EPBS may submit a timely written request for an extension of time to perform any act or file any notification or report required by this CIA. Notwithstanding any other provision in this section, if OIG grants the timely written request with respect to an act, notification, or report, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until one day after EPBS fails to meet the revised deadline as agreed to by the OIG-approved extension. Notwithstanding any other provision in this section, if OIG denies such a timely written request, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until two (2) business days after EPBS receives OIG's written denial of such request. A "timely written request" is defined as a request in writing received by OIG at least five (5) business days prior to the date by which any act is due to be performed or any notification or report is due to be filed.

3. *Form of Payment*. Payment of the Stipulated Penalties shall be made by certified or cashier's check, payable to "Secretary of the Department of Health and Human Services," and submitted to OIG at the address set forth in section VI.

4. *Independence from Material Breach Determination*. Except as otherwise noted, these provisions for payment of Stipulated Penalties shall not affect or otherwise set a standard for the OIG's determination that EPBS has materially breached this CIA, which decision shall be made at the OIG's discretion and governed by the provisions in section XI.C, below.

EXHIBIT C

C. Exclusion for Material Breach of this CIA

1. *Notice of Material Breach and Intent to Exclude.* The parties agree that a material breach of this CIA by EPBS constitutes an independent basis for EPBS's exclusion from participation in the Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)). Upon a determination by OIG that EPBS has materially breached this CIA and that exclusion should be imposed, the OIG shall notify EPBS by certified mail of (a) EPBS's material breach; and (b) OIG's intent to exercise its contractual right to impose exclusion (this notification is hereinafter referred to as the "Notice of Material Breach and Intent to Exclude").

2. *Opportunity to Cure.* EPBS shall have thirty five (35) days from the date of the Notice of Material Breach and Intent to Exclude Letter to demonstrate to the OIG's satisfaction that:

a. EPBS is in full compliance with this CIA;

b. the alleged material breach has been cured; or

c. the alleged material breach cannot be cured within the 35-day period, but that: (i) EPBS has begun to take action to cure the material breach, (ii) EPBS is pursuing such action with due diligence, and (iii) EPBS has provided to OIG a reasonable timetable for curing the material breach.

3. *Exclusion Letter.* If at the conclusion of the thirty five (35) day period, EPBS fails to satisfy the requirements of section XI.C.2, OIG may exclude EPBS from participation in the Federal health care programs. OIG will notify EPBS in writing of its determination to excluded EPBS (this letter shall be referred to hereinafter as the "Exclusion Letter"). Subject to the Dispute Resolution provisions in section XI.D, below, the exclusion shall go into effect thirty (30) days after the date of the Exclusion Letter. The exclusion shall have national effect and will also apply to all other federal procurement and non-procurement programs. If EPBS is excluded under the provisions of this CIA, EPBS may seek reinstatement pursuant to the provisions at 42 C.F.R. §§ 1001.3001-.3004.

4. *Material Breach.* A material breach of this CIA means:

a. a failure by EPBS to report a material deficiency, take corrective action and pay the appropriate refunds, as provided in section III.D;

b. repeated or flagrant violations of the obligations under this CIA, including, but not limited to, the obligations addressed in section XI.A of this CIA;

c. a failure to respond to a Demand letter concerning the payment of Stipulated Penalties in accordance with section XI.B above; or

d. a failure to retain and use an Independent Review Organization for review purposes in accordance with section III.D.

D. Dispute Resolution

1. *Review Rights.* Upon the OIG's delivery to EPBS of its Demand Letter or of its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under the obligation of this CIA, EPBS shall be afforded certain review rights comparable to the ones that are provided in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. § 1005 as if they applied to the Stipulated Penalties or exclusion sought pursuant to this CIA. Specifically, the OIG's determination to demand payment of Stipulated Penalties or to seek exclusion shall be subject to review by an ALJ and, in the event of an appeal, the Departmental Appeals Board ("DAB"), in a manner consistent with the provisions in 42 C.F.R. §§ 1005.2-1005.21. Notwithstanding the language in 42 C.F.R. § 1005.2(c), the request for a hearing involving stipulated penalties shall be made within fifteen (15) days of the date of the Demand Letter and the request for a hearing involving exclusion shall be made within thirty (30) days of the date of the Exclusion Letter.

2. *Stipulated Penalties Review.* Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for stipulated penalties under this CIA shall be (a) whether EPBS was in full and timely compliance with the obligations of this CIA for which the OIG demands payment; and (b) the period of noncompliance. EPBS shall have the burden of proving its full and timely compliance and the steps taken to cure the noncompliance, if any. If the ALJ finds for the OIG with regard to a finding of a breach of this CIA and orders EPBS to pay Stipulated Penalties, such Stipulated Penalties shall become due and

payable twenty (20) days after the ALJ issues such a decision notwithstanding that EPBS may request review of the ALJ decision by the DAB.

3. *Exclusion Review.* Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for exclusion based on a material breach of this CIA shall be (a) whether EPBS was in material breach of this CIA; (b) whether such breach was continuing on the date of the Exclusion Letter; and (c) whether the alleged material breach cannot be cured within the 35 day period, but that (i) EPBS has begun to take action to cure the material breach, (ii) EPBS is pursuing such action with due diligence, and (iii) EPBS has provided to OIG a reasonable timetable for curing the material breach.

For purposes of the exclusion herein, exclusion shall take effect only after an ALJ decision that is favorable to the OIG. EPBS's election of its contractual right to appeal to the DAB shall not abrogate the OIG's authority to exclude EPBS upon the issuance of the ALJ's decision. If the ALJ sustains the determination of the OIG and determines that exclusion is authorized, such exclusion shall take effect twenty (20) days after the ALJ issues such a decision, notwithstanding that EPBS may request review of the ALJ decision by the DAB.

XII. EFFECTIVE AND BINDING AGREEMENT

Consistent with the provisions in the Settlement Agreement pursuant to which this CIA is entered, and into which this CIA is incorporated, EPBS and OIG agree as follows:

A. This CIA shall be binding on the successors, assigns and transferees of EPBS;

B. This CIA shall become final and binding on the date the final signature is obtained on the CIA;

C. Any modifications to this CIA shall be made with the prior written consent of the parties to this CIA; and

D. The undersigned EPBS signatories represent and warrant that they are authorized to execute this CIA. The undersigned OIG signatory represents that he is signing this CIA in his official capacity and that he is authorized to execute this CIA.

EXHIBIT C

ON BEHALF OF EMERGENCY PHYSICIANS BILLING SERVICE

KENNETH R. GOODIN
President & Chief Executive Officer
Emergency Physicians Billing Service, Inc.

9-27-99
DATE

TODD TAYLOR, ESQ.
Crowe & Dunlevy
Counsel for Emergency Physician Billing Service, Inc.

9-27-99
DATE

EXHIBIT C

ON BEHALF OF THE OFFICE OF INSPECTOR GENERAL
OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

LEWIS MORRIS
Assistant Inspector General for Legal Affairs
Office of Inspector General
U. S. Department of Health and Human Services

9/24/97
DATE