

## MASTER SUBSCRIPTION AND LICENSE AGREEMENT

This Master Subscription and License Agreement (the "Agreement") is entered into as of September 18, 2018, ("Effective Date"), by and between ESO Solutions, Inc., a Texas corporation having its principal place of business at 11500 Alterra Parkway, Suite 100 Austin, TX 78758 ("ESO") and Marion County, a political subdivision of the State of Florida ("Customer") having its principal place of business at 601 SE 25<sup>th</sup> Ave., Ocala, FL 34471. This Agreement consists of the General Terms & Conditions below and any Addenda (as defined below) executed by the parties, including any attachments to such Addenda.

The parties have agreed that ESO will provide Customer with certain technology products and/or services and that Customer will pay to ESO certain fees. Therefore, in consideration of the covenants, agreements and promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as set forth in the pages that follow.

### GENERAL TERMS AND CONDITIONS

#### I. DEFINITIONS. Capitalized terms not otherwise defined in this Agreement shall have the meanings below:

- 1.1. "Add-On Software" means any complementary software components or reporting service(s) that ESO makes available to customer through its Licensed Software, Interoperability Software or SaaS.
- 1.2. "Addendum" or "Addenda" means a writing addressing an order of a specific set of products or services executed by authorized representatives of each party. An Addendum may be (a) a Software Schedule (see Exhibit A1 – A4), (b) a Statement of Work, or (c) another writing the parties intend to be incorporated by reference into this Agreement.
- 1.3. "Customer Data" means data in electronic form managed or stored by ESO, which is entered into or transmitted through the Software.
- 1.4. "Deliverable" means software, report, or other work product created pursuant to a Statement of Work.
- 1.5. "Documentation" means user guides, operating manuals, and specifications regarding the Software covered by this Agreement.
- 1.6. "Feedback" refers to any suggestion or idea for improving or otherwise modifying ESO's products or services.
- 1.7. "Intellectual Property" means trade secrets, copyrightable subject matter, patents, and patent applications and other proprietary information, activities, and any ideas, concepts, innovations, inventions and designs.
- 1.8. "Interoperability Software" means software-as-a-service that ESO hosts (directly or indirectly) for Customer to exchange healthcare data with others. Some of ESO's Reporting Services may be made available to Customer via the Interoperability Software. For the avoidance of doubt, Interoperability Software does not include Add-on Software, Licensed Software or SaaS.
- 1.9. "Licensed Software" means on premise software that ESO provides to Customer for its reproduction and use. For the avoidance of doubt, Licensed Software does not include Add-on Software, Interoperability Software or SaaS.
- 1.10. "Professional Services" means professional services that a Statement of Work calls on ESO to provide.

- 1.11. "Protected Health Information" or "PHI" shall have the meaning set forth in HIPAA. All references herein to PHI shall be construed to include electronic PHI, or ePHI, as that term is defined by HIPAA.
- 1.12. "Reporting Services" means collectively the different programs or tools ESO provides for Customer to generate compilations of data, including but not limited to ad-hoc reports, analytics, benchmarking or any other reporting tool provided through the Software.
- 1.13. "SaaS" means software-as-a-service that ESO hosts (directly or indirectly) for Customer's use. For the avoidance of doubt, SaaS does not include Licensed Software, but does include Add-on Software and Interoperability Software.
- 1.14. "Software" means any computer program, programming or modules specified in each Software Schedule or SOW. For the avoidance of doubt, Add-on Software, SaaS, Interoperability Software; and Licensed Software shall collectively be referred to as Software.
- 1.15. "Software Schedule" refers to an Addendum in which Customer has ordered either Add-on Software, Licensed Software, Interoperability Software or SaaS, collectively Software. See Exhibit A1.
- 1.16. "Statement of Work" or "SOW" refers to an Addendum in which Customer has ordered Professional Services or a Deliverable from ESO.
- 1.17. "Support Services" means those services described in Exhibit B.
- 1.18. "User" means any individual who uses the Software on Customer's behalf or through Customer's account or passwords, whether authorized or not.

- 2. **SOFTWARE SCHEDULES.** During the Term of this Agreement, Customer may order Software from ESO by signing a Software Schedule. Customer's license to Licensed Software and its subscription to SaaS are set forth below. Each such Software Schedule, Exhibit A-I is incorporated herein by reference.

#### 3. LICENSE/SUBSCRIPTION TO SOFTWARE

- 3.1. Grant of License. In the case of Licensed Software, during the Term of this Agreement ESO hereby grants Customer a

limited, non-exclusive, non-transferable, non-assignable, revocable license to copy and use the Licensed Software, in such quantities as are set forth on the applicable Software Schedule and as necessary for Customer's internal business purposes; provided that, Customer complies with the Restrictions on Use (Section 3.3) and other limitations and obligations contained in this Agreement. Such internal business purposes do not include reproduction or use by any parent, subsidiary, or affiliate of Customer, or any other third party, and Customer shall not permit any such use.

3.2. Grant of Subscription. In the case of SaaS, during the term of this Agreement Customer may access and use the SaaS, in such quantities as are set forth on the applicable Software Schedule; provided that, Customer complies with the Restrictions on Use (Section 3.3) and other limitations contained in this Agreement.

3.3. Restrictions on Use. Except as provided in this Agreement or as otherwise authorized by ESO, Customer has no right to: (a) decompile, reverse engineer, disassemble, print, copy or display the Software or otherwise reduce the Software to a human perceivable form in whole or in part; (b) publish, release, rent, lease, loan, sell, distribute or transfer the Software to another person or entity; (c) reproduce the Software for the use or benefit of anyone other than Customer; (d) alter, modify or create derivative works based upon the Software either in whole or in part; or (e) use or permit the use of the Software for commercial time-sharing arrangements or providing service bureau, data processing, rental, or other services to any third party. The rights granted under the provisions of this Agreement do not constitute a sale of the Software. ESO retains all right, title, and interest in and to the Software, including without limitation all software used to provide the Software and all graphics, user interfaces, logos and trademarks reproduced through the Software, except to the limited extent set forth in this Agreement. This Agreement does not grant Customer any intellectual property rights in the Software or any of its components, except to the limited extent that this Agreement specifically sets forth Customer's rights to access, use, or copy the Software during the Term of this Agreement. Customer recognizes that the Software and its components are protected by copyright and other laws.

3.4. Delivery. In the case of Licensed Software, ESO shall provide the Licensed Software to Customer through a reasonable system of electronic download. In the case of SaaS, ESO shall grant Customer access to SaaS promptly after the Effective Date.

3.5. Third-Party Software. Software may incorporate software and other technology owned and controlled by third parties ("Third-Party Software"). ESO is licensed to sublicense and distribute Third-Party Software. All Third-Party Software falls under the scope of this Agreement. Moreover, ESO neither accepts liability, nor warrants the functionality, reliability or accuracy of Third-Party Software, including but not limited to third-party mapping applications.

#### 4. HOSTING, SLA & SUPPORT SERVICES

4.1. Hosting & Management. Customer shall be solely responsible for hosting and managing the Licensed Software. ESO shall be responsible for hosting and managing the SaaS.

4.2. Service Level Agreement. No credits shall be given in the event Customer's access to SaaS is delayed, impaired or otherwise disrupted (collectively, an "Outage"). If such Outage, excluding Scheduled Downtime (as defined below), results in the service level uptime falling below 99% for three consecutive months or three months in any rolling twelve-month period (collectively, "Uptime Commitment"), then Customer shall have the option to immediately terminate this Agreement; and ESO will refund any prepaid, unearned Fees to Customer. This is Customer's sole remedy for ESO's breach of the Uptime Commitment.

4.3. Scheduled Downtime. In the event ESO determines that it is necessary to intentionally interrupt the SaaS or that there is a potential for the SaaS to be interrupted for the performance of system maintenance (collectively, "Scheduled Downtime"), ESO will use good-faith efforts to notify Customer of such Scheduled Downtime at least 72 hours in advance and will ensure Scheduled Downtime occurs during non-peak hours (midnight to 6 a.m. Central Time). In no event shall Scheduled Downtime constitute a failure of performance by ESO.

4.4. Support and Updates. During the Term of this Agreement, ESO shall provide to Customer the Support Services, in accordance with Exhibit B. Exhibit B is incorporated herein by reference.

#### 5. FEES

5.1. Fees. In consideration of the rights granted and except in the event there is a Third-Party Payer (as defined below), Customer agrees to pay ESO the fees for the Software and/or Professional Services as set forth in the Software Schedule(s) or SOW(s) (collectively, "Fees"). The Fees are non-cancelable and non-refundable. Customer shall pay all invoices per Florida's Local Government Prompt Payment Act Statute. In the event a third-party is paying some or all of the Fees on behalf of Customer ("Third-Party Payer"), the Software Schedule will state that payment obligation. The parties agree that Customer may replace the Third-Party Payer by submitting to ESO written notice memorializing the change. However, no such change shall be made until the then-current Term's renewal. Moreover, Customer is responsible for payment in the event the Third-Party Payer does not pay the Fees and Customer continues using the Software. For the avoidance of doubt, any such Addenda will become part of this Agreement.

5.2. Uplift on Renewal. Except in the instance of Overages (as defined below), Fees for Software, which recur annually, shall increase by two percent (2%) each year this Agreement is in effect, beginning October 1, 2020.

5.3. Taxes and Fees. This Agreement is exclusive of all taxes and credit card processing fees, if applicable. Customer is responsible for and will remit (or will reimburse ESO upon ESO's request) all taxes of any kind, including sales, use, duty, customs, withholding, property, value-added, and other similar federal, state or local taxes (other than taxes based on ESO's income) related to this Agreement, unless Customer provides ESO with their current tax exemption certificate.

5.4. Appropriation of Funds. If Customer is a city, county or other government entity, the parties accept and agree that Customer has the right to terminate the Agreement at the end of the Customer's fiscal term for a failure by

Customer's governing body to appropriate sufficient funds for the next fiscal year. Notwithstanding the foregoing, this provision shall not excuse Customer from past payment obligations or other Fees earned and unpaid. Moreover, Customer agrees to provide ESO reasonable documentation evidencing such non-appropriation of funds.

- 5.5. Monitoring Rights. ESO may regularly monitor Customer's usage of the Software and charge Customer increased Fees in accordance with ESO's Exhibit D to this Agreement if Customer's usage has increased beyond the quantity contracted for in the current Software Schedule (for example, Customer is uploading more records into the Software than it has previously contracted for) (collectively, "Overages"). Provided, however, that ESO's invoice for Overages shall only be invoiced along with the issuance of the Customer's next scheduled invoice, and that ESO shall provide written notice of said Overages prior to October 30<sup>th</sup> of that year to go into effect October 1 of the following year. In no event shall Overages be invoiced retroactively.

## 6. TERM AND TERMINATION

- 6.1. Term. The term of this Agreement (the "Term") shall commence on the Effective Date and continue for the period set forth in the applicable Software Schedule or, if none, for five years. Thereafter, the Agreement may be renewed by mutual written consent of the parties. The license period or subscription period shall begin on the date specified in the applicable Software Schedule, and this Agreement shall automatically be extended to ensure that the contract Term is coterminous with the subscription period or license period, as applicable.
- 6.2. Termination for Cause. Either party may terminate this Agreement or any individual Software Schedule for the other party's material breach by providing written notice. The breaching party shall have thirty days from receipt to cure such breach to the reasonable satisfaction of the non-breaching party.
- 6.3. Bankruptcy/Insolvency. This Agreement and any applicable Software Schedule may be terminated immediately upon the following: (a) the institution of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of debts of the other party; (b) the making of an assignment for the benefit of creditors by the other party; or (c) the dissolution of the other party.
- 6.4. Effect of Termination.
- 6.4.1. If this Agreement or any Software Schedule is terminated by Customer prior to the expiration of its then-current term, for any reason other than ESO's breach or non-appropriation of funds by Customer's governing body, Customer agrees to immediately remit all unpaid Fees as set forth on the applicable Software Schedule equal to the Fees that will become due during the remaining Term.
- 6.4.2. If Customer terminates this Agreement or any Software Schedule as a result of ESO's breach, then to the extent that Customer has prepaid any Fees, ESO shall refund to Customer any prepaid Fees on a pro-rata basis to the extent such Fees are attributable to the period after the termination date.

- 6.4.3. Upon termination of this Agreement or any Software Schedule, Customer shall cease all use of the Software and delete, destroy or return all copies of the Documentation and Licensed Software in its possession or control, except as required by law.

- 6.4.4. Termination of this Agreement is without prejudice to any other right or remedy of the parties and shall not release either party from any liability (a) which at the time of termination, has already accrued to the other party, (b) which may accrue in respect of any act or omission prior to termination, or (c) from any obligation which is intended to survive termination.

- 6.5. Delivery of Data. If Customer requests its data within sixty (60) days of expiration or termination of this Agreement, ESO will provide Customer access to Customer Data in a searchable .pdf format within a reasonable time frame thereafter. ESO is under no obligation to retain Customer Data more than sixty (60) days after expiration or termination of this Agreement.

## 7. REPRESENTATIONS AND WARRANTIES

- 7.1. Material Performance of Software. ESO warrants and represents that the Software will materially perform in accordance with the Documentation provided by ESO, if any.
- 7.2. Warranty of Services. ESO warrants that its personnel are adequately trained and competent to perform Professional Services and/or Support Services and that each will be performed in a professional and workmanlike manner.
- 7.3. Due Authority. Each party's execution, delivery and performance of this Agreement and each agreement or instrument contemplated by this Agreement has been duly authorized by all necessary corporate or government action.
- 7.4. Customer Cooperation. Customer agrees to reasonably and timely cooperate with ESO, including but not limited to providing ESO with reasonable access to its equipment, software, data and using current operating system(s).

8. DISCLAIMER OF WARRANTIES. EXCEPT AS OTHERWISE PROVIDED IN SECTION 7, ESO HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, TITLE, NON-INFRINGEMENT, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) ESO DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE WILL PERFORM WITHOUT INTERRUPTION OR ERROR; AND (b) ESO DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT CUSTOMER DATA WILL REMAIN PRIVATE OR SECURE. CUSTOMER THEREFORE ACCEPTS THE SOFTWARE "AS-IS" AND "AS AVAILABLE."

## 9. CONFIDENTIALITY



- 9.1. "Confidential Information" refers to the following items: (a) any document marked "Confidential"; (b) any information orally designated as "Confidential" at the time of disclosure, provided the disclosing party confirms such designation in writing within five (5) business days; (c) the Software and Documentation, whether or not designated confidential; and (d) any other nonpublic, sensitive information reasonably considered a trade secret or otherwise confidential. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in the other party's possession at the time of disclosure; (ii) is independently developed without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of a party's improper action or inaction; (iv) is approved for release in writing by the disclosing party; (v) is required to be disclosed by law; or (vi) PHI, which shall be governed by the Business Associate Agreement rather than this Section.
- 9.2. Nondisclosure. The parties shall not use Confidential Information for any purpose other than to fulfill the terms of this Agreement (the "Purpose"). Each party: (a) shall ensure that its employees or contractors are bound by confidentiality obligations no less restrictive than those contained herein and (b) shall not disclose Confidential Information to any other third party without prior written consent from the disclosing party. Without limiting the generality of the foregoing, the receiving party shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. A receiving party shall promptly notify the disclosing party of any misuse or misappropriation of Confidential Information of which it is aware.
- 9.3. Disclosure of ESO's Security Policies. Customer acknowledges that any information provided by ESO pertaining to ESO's security controls, policies, procedures, audits, or other information concerning ESO's internal security posture are considered Confidential Information and shall be treated by Customer in accordance with the terms and conditions of this Agreement.
- 9.4. Injunction. Omitted.
- 9.5. Termination & Return. With respect to each item of Confidential Information, the obligations of nondisclosure will terminate three (3) years after the date of disclosure; provided that, such obligations related to Confidential Information constituting ESO's trade secrets shall continue so long as such information remains subject to trade secret protection pursuant to applicable law. Upon termination of this Agreement, a party shall return all copies of Confidential Information to the other or certify, in writing, the destruction thereof.
- 9.6. Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto.
- 9.7. Open Records and Other Laws. Notwithstanding anything in this Section to the contrary, the parties expressly acknowledge that Confidential Information may be disclosed if such Confidential Information is required to be disclosed by law, a lawful public records request, or judicial order, provided that prior to such disclosure, written notice of such required disclosure shall be given promptly and without unreasonable delay by the receiving party in order

to give the disclosing party the opportunity to object to the disclosure and/or to seek a protective order. The receiving party shall reasonably cooperate in this effort. In addition, Customer may disclose the contents of this Agreement solely for the purpose of completing its review and approval processes under its local rules, if applicable.

10. **INSURANCE**. Throughout the term of this Agreement, and for a period of at least three (3) years thereafter for any insurance written on a claims-made form, ESO shall maintain in effect the insurance coverage described below:

- 10.1. Commercial general liability insurance with a minimum of \$1 million per occurrence and \$1 million aggregate;
- 10.2. Commercial automobile liability insurance covering use of all non-owned and hired automobiles with a minimum limit of \$1 million for bodily injury and property damage liability;
- 10.3. Worker's compensation insurance and employer's liability insurance or any alternative plan or coverage as permitted or required by applicable law, with a minimum employer's liability limit of \$1 million each accident or disease; and
- 10.4. Computer processor/computer professional liability insurance ("Technology Errors and Omissions") covering the liability for financial loss due to error, omission or negligence of ESO, and Privacy and Network Security insurance ("Cyber") covering losses arising from a disclosure of confidential information, with a combined aggregate amount of \$3 million.

## 11. INDEMNIFICATION

- 11.1. IP Infringement. ESO shall defend and indemnify Customer from any damages, costs, liabilities, expenses (including reasonable and actual attorney's fees) ("Damages") actually incurred or finally adjudicated as to any third-party claim or action alleging that the Software delivered pursuant to this Agreement infringe or misappropriate any third party's patent, copyright, trade secret, or other intellectual property rights enforceable in the applicable jurisdiction (each an "Indemnified Claim"). If an Indemnified Claim under this Section occurs or if ESO determines that an Indemnified Claim is likely to occur, ESO shall at its option: (a) obtain a right for Customer to continue using such Software; (b) modify such Software to make it a non-infringing equivalent or (c) replace such Software with a non-infringing equivalent. If (a), (b), or (c) above are not reasonably available, either party may, at its option, terminate this Agreement and/or relevant Software Schedule. ESO will refund any pre-paid Fees on a pro-rata basis for the allegedly infringing Software provided. Notwithstanding the foregoing, ESO shall have no obligation hereunder for any claim resulting or arising from (x) Customer's breach of this Agreement; (y) modifications made to the Software that were not performed or provided by or on behalf of ESO or (z) the combination, operation or use by Customer or anyone acting on Customer's behalf of the Software in connection with a third-party product or service (the combination of which causes the infringement). This Section 11 states ESO's sole obligation and liability, and Customer's sole remedy, for potential or actual intellectual property infringement by the Software.
- 11.2. Indemnification Procedures. Upon becoming aware of any matter which is subject to the provisions of Sections 11.1 (a

"Claim"), the party seeking indemnification (the "Indemnified Party") must give prompt written notice of such Claim to the other party (the "Indemnifying Party"), accompanied by copies of any written documentation regarding the Claim received by the Indemnified Party. The Indemnifying Party shall compromise or defend, at its own expense and with its own counsel, any such Claim. The Indemnified Party will have the right, at its option, to participate in the settlement or defense of any such Claim, with its own counsel and at its own expense; provided, however, that the Indemnifying Party will have the right to control such settlement or defense. The Indemnifying Party will not enter into any settlement that imposes any liability or obligation on the Indemnified Party without the Indemnified Party's prior written consent. The parties will cooperate in any such settlement or defense and give each other full access to all relevant information, at the Indemnifying Party's expense.

## 12. LIMITATION OF LIABILITY

- 12.1. **LIMITATION OF DAMAGES.** UNDER NO CIRCUMSTANCES SHALL ESO OR CUSTOMER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, INCLUDING CLAIMS FOR DAMAGES FOR LOST PROFITS, GOODWILL, USE OF MONEY, INTERRUPTED OR IMPAIRED USE OF THE SOFTWARE, AVAILABILITY OF DATA, STOPPAGE OF WORK OR IMPAIRMENT OF OTHER ASSETS.
- 12.2. **LIMITATION OF LIABILITY.** WITH THE EXCEPTION OF SECTION 12.3 (EXCEPTIONS TO THE LIMITATION OF LIABILITY), ESO'S MAXIMUM AGGREGATE LIABILITY FOR ALL CLAIMS OF LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, SHALL NOT EXCEED THE FEES PAID BY CUSTOMER OR ON BEHALF OF CUSTOMER IN THE CASE OF A THIRD-PARTY PAYER UNDER THE APPLICABLE SOFTWARE SCHEDULE OR SOW GIVING RISE TO THE CLAIM WITHIN THE PRECEDING 24-MONTH PERIOD.
- 12.3. **EXCEPTIONS TO LIMITATION OF LIABILITY.** NOTWITHSTANDING SECTION 12.2, A PARTY'S LIABILITY FOR CLAIMS INVOLVING A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 11, SHALL BE LIMITED TO \$250,000. IN ADDITION, AND NOTWITHSTANDING SECTION 12.2, A PARTY'S LIABILITY SHALL BE LIMITED TO THE AMOUNT OF INSURANCE COVERAGE REQUIRED BY SECTION 10 FOR THE FOLLOWING TYPES OF CLAIMS: (I) CLAIMS ARISING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; AND (II) CLAIMS ARISING FROM A BREACH OF CONFIDENTIAL INFORMATION, INCLUDING A BREACH OF PROTECTED HEALTH INFORMATION.
- 12.4. THE FOREGOING LIMITATIONS, EXCLUSIONS, DISCLAIMERS SHALL APPLY REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT OR OTHERWISE. INsofar AS APPLICABLE LAW PROHIBITS ANY LIMITATION HEREIN, THE PARTIES AGREE THAT SUCH LIMITATION SHALL BE AUTOMATICALLY MODIFIED, BUT ONLY TO THE EXTENT SO AS TO MAKE THE LIMITATION PERMITTED TO THE

FULLEST EXTENT POSSIBLE UNDER SUCH LAW. THE PARTIES AGREE THAT THE LIMITATIONS SET FORTH HEREIN ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR ESO'S SOFTWARE AND SERVICES TO CUSTOMER, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSES OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES.

- 12.5. THIS SECTION 12 SHALL SURVIVE EXPIRATION OR TERMINATION OF THE AGREEMENT.

## 13. CUSTOMER DATA & PRIVACY

- 13.1. **Ownership of Data & Reports.** As between ESO and Customer, all Customer Data shall be owned by Customer. Without limiting the foregoing, ESO will own all right, title and interest in all Intellectual Property in any aggregated and de-identified reports, summaries, compilations, analysis or other information made available through ESO's Reporting Services. If subscribed to by Customer, ESO grants to Customer a limited, non-exclusive license to use its Reporting Services for Customer's internal purposes only during the Term of this Agreement. No other third party shall rely on ESO's Reporting Services or the contents thereof. ESO disclaims all liability for any damages related thereto. Customer acknowledges and agrees that any such license expires upon the expiration or termination of the applicable Software Schedule granting a license to ESO's Reporting Services.
- 13.2. **Use of Customer Data.** Unless it receives Customer's prior written consent, ESO: (a) shall not access, process, or otherwise use Customer Data; and (b) shall not intentionally grant any third-party access to Customer Data, including without limitation ESO's other customers, except subcontractors that are subject to a reasonable nondisclosure agreement or authorized participants in the case of Interoperability Software. Notwithstanding the foregoing, ESO may use and disclose Customer Data to fulfill its obligations under this Agreement or as required by applicable law or by proper legal or governmental authority. ESO shall give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer's expense.
- 13.3. **Anonymized Data.** Notwithstanding any provision herein, ESO may use, reproduce, license, or otherwise exploit Anonymized Data; provided that Anonymized Data does not contain and is not PHI. ("Anonymized Data" refers to Customer Data with the following removed: personally identifiable information and the names and addresses of Customer and any of its Users and/or Customer's clients.)
- 13.4. **Risk of Exposure.** Customer recognizes and agrees that hosting data online involves risks of unauthorized disclosure and that, in accessing and using the SaaS, Customer assumes such risks. Customer has sole responsibility for obtaining, maintaining, and securing its connections to the Internet. ESO makes no representations to Customer regarding the reliability, performance or security of any network or provider.

#### 14. FEEDBACK RIGHTS & WORK PRODUCT

- 14.1. Feedback Rights. ESO does not agree to treat as confidential any Feedback that Customer provides to ESO. Nothing in this Agreement will restrict ESO's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensation or crediting Customer. Feedback will not constitute Confidential Information, even if it would otherwise qualify as such pursuant to Section 9 (Confidential Information).
- 14.2. Work Product Ownership. In the event Customer hires ESO to perform Professional Services, ESO alone shall hold all right, title, and interest to all proprietary and intellectual property rights of the Deliverables (including, without limitation, patents, trade secrets, copyrights, and trademarks), as well as title to any copy of software made by or for Customer (if applicable). Customer hereby explicitly acknowledges and agrees that nothing in this Agreement or a separate SOW gives the Customer any right, title, or interest to the intellectual property or proprietary know-how of the Deliverables.

#### 15. GOVERNMENT PROVISIONS

- 15.1. Compliance with Laws. Both parties shall comply with and give all notices required by all applicable federal, state and local laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of this Agreement.
- 15.2. Business Associate Addendum. The parties agree to the terms of the Business Associate Addendum attached hereto as Exhibit C and incorporated herein by reference.
- 15.3. Equal Opportunity. The parties shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a), and the posting requirements of 29 CFR Part 471, appendix A to subpart A, if applicable. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin.
- 15.4. Excluded Parties List. ESO agrees to immediately report to Customer if an employee or contractor is listed by a federal agency as debarred, excluded or otherwise ineligible for participation in federally funded health care programs.

#### 16. PHI ACCURACY & COMPLETENESS

- 16.1. ESO provides the Software to allow Customer (and its respective Users) to enter, document, and disclose Customer Data, and as such, ESO gives no representations or guarantees about the accuracy or completeness of Customer Data (including PHI) entered, uploaded or disclosed through the Software.
- 16.2. Customer is solely responsible for any decisions or actions taken involving patient care or patient care management, whether those decisions or actions were made or taken using information received through the Software.

#### 17. MISCELLANEOUS

- 17.1. Independent Contractors. The parties are independent contractors. Neither party is the agent of the other, and neither may make commitments on the other's behalf. The parties agree that no ESO employee or contractor is or will be considered an employee of Customer.
- 17.2. Notices. Notices provided under this Agreement must be in writing and delivered by (a) certified mail, return receipt requested to a party's principal place of business as forth in the recitals on page 1 of this Agreement, (b) hand delivered, (c) facsimile with receipt of a "Transmission Confirmed" acknowledgment, (d) e-mail, or (e) delivery by a reputable overnight carrier service. In the case of delivery by facsimile or e-mail, the notice must be followed by a copy of the notice being delivered by a means provided in (a), (b) or (e). The notice will be deemed given on the day the notice is received.
- 17.3. Merger Clause. In entering into this Agreement, neither party is relying upon any representations or statements of the other that are not fully expressed in this Agreement; rather each party is relying on its own judgment and due diligence and expressly disclaims reliance upon any representations or statement not expressly set forth in this Agreement. In the event the Customer issues a purchase order, letter or any other document addressing the Software or Services to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that any such writing is for the Customer's internal purposes only, and that any terms, provisions, and conditions contained therein shall in no way modify this Agreement.
- 17.4. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. If a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 17.5. Assignment & Successors. Neither party may assign, subcontract, delegate or otherwise transfer this Agreement or any of its rights or obligations hereunder, nor may it contract with third parties to perform any of its obligations hereunder except as contemplated in this Agreement, without the other party's prior written consent. Except that either party may, without the prior consent of the other, assign all its rights under this Agreement to (i) a purchaser of all or substantially all assets related to this Agreement, or (ii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which either party is participating (collectively, a "Change in Control"); provided however, that the non-assigning party is given notice of the Change in Control.
- 17.6. Modifications and Amendments. This Agreement may not be amended except through a written agreement signed by authorized representatives of each party.
- 17.7. Force Majeure. No delay, failure, or default, other than a failure to pay Fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing




- party's reasonable control (collectively, "Force Majeure"). In such event, however, the delayed party must promptly provide the other party notice of the Force Majeure. The delayed party's time for performance will be excused for the duration of the Force Majeure, but if the event last longer than thirty (30) days, the other party may immediately terminate the applicable Software Schedule.
- 17.8. Marketing. Omitted.
- 17.9. Waiver & Breach. Neither party will be deemed to have waived any of its rights under this Agreement unless it is an explicit written waiver made by an authorized representative. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
- 17.10. Survival of Terms. Unless otherwise stated, all of ESO's and Customer's respective obligations, representations and warranties under this Agreement which are not, by the expressed terms of this Agreement, fully to be performed while this Agreement is in effect shall survive the termination of this Agreement.
- 17.11. Ambiguous Terms. This Agreement will not be construed against any party by reason of its preparation.
- 17.12. Governing Law. This Agreement, any related Addenda, and any CLAIM, DISPUTE, OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT AND EQUITABLE CLAIMS) BETWEEN CUSTOMER AND ESO, including their affiliates, contractors, and agents, and each of their respective employees, directors, and officers (a "Dispute") will be governed by the laws of the State of Florida, without regard to conflicts of law.
- 17.13. Venue. The parties agree that any Dispute shall be brought exclusively in the state or federal courts of appropriate jurisdiction in the State of Florida. The parties agree to submit to the personal jurisdiction of such courts.
- 17.14. Bench Trial. The parties agree to waive, to the maximum extent permitted by law, any right to a jury trial with respect to any Dispute.
- 17.15. No Class Actions. NEITHER PARTY SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST THE OTHER CUSTOMERS, OR PURSUE ANY CLAIM AS A REPRESENTATIVE OR CLASS ACTION OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.
- 17.16. Limitation Period. NEITHER PARTY, shall be liable for any claim brought more than 5 years after the cause of action for such claim first arose.
- 17.17. Dispute Resolution. Customer and ESO will attempt to resolve any Dispute through negotiation or by utilizing a mediator agreed to by the parties, rather than through litigation. Negotiations and mediations will be treated as confidential. If the parties are unable to reach a resolution within thirty (30) days of notice of the Dispute to the other party, the parties may pursue all other courses of action available at law or in equity.
- 17.18. Technology Export. Customer shall not: (a) permit any third party to access or use the Software in violation of any U.S. law or regulation; or (b) export any software provided by ESO or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Customer shall not permit any third party to access or use the Software in, or export such software to, a country subject to a United States embargo (as of the Effective Date - Cuba, Iran, North Korea, Sudan, and Syria).
- 17.19. Order of Precedence. In the event of any conflict between this Agreement, Addenda or other attachments incorporated herein, the following order of precedence will govern: (1) the General Terms and Conditions; (2) any Business Associate Agreement; (3) the applicable Software Schedule or SOW, with most recent Software Schedule or SOW taking precedence over earlier ones; and (3) any ESO policy posted online, including without limitation its privacy policy. No amendments incorporated into this Agreement after execution of the General Terms and Conditions will amend such General Terms and Conditions unless it specifically states its intent to do so and cites the section or sections amended.
- 17.20. Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, and all such counterparts will constitute a single instrument.
- 17.21. Cooperative Procurement. As provided in Section 287.042(16)(a), F.S., other state agencies may purchase from the resulting contract, provided that the Department of Management Services has determined that the Agreement's use is cost-effective and in the best interest of the State. Upon such approval, ESO may, at its discretion, sell these commodities or services to additional agencies, upon the terms and conditions contained herein.
- 17.22. Signatures. Electronic signatures on this Agreement or on any Addendum (or copies of signatures sent via electronic means) are the equivalent of handwritten signatures.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

ESO Solutions, Inc.

Customer

  
[Signature]

Chris Dillie  
[Printed Name]

CEO & President  
[Title]

  
[Signature]

KATHY BRYANT  
[Printed Name]

CHAIRMAN  
[Title]



EXHIBIT A-1

SaaS SOFTWARE SCHEDULE

(Applications - ESO EHR, ESO Fire, ESO PM)

1. The General Terms & Conditions are incorporated herein by reference. The SaaS subscription term shall begin on October 1<sup>st</sup>, 2019 ("SaaS Subscription Start Date"). Customer shall be deemed to have accepted the SaaS on the SaaS Subscription Start Date. The parties will make reasonable efforts to ensure that Customer is live on the SaaS as quickly as possible, and in no event will the SaaS Subscription Start Date be modified for implementation delays.

2. The following SaaS may be ordered under this Exhibit:

- 2.1. ESO Electronic Health Record ("EHR") is a SaaS software application for prehospital patient documentation (<http://www.esosolutions.com/software/ehr>).
- 2.2. ESO Personnel Management ("PM") is a SaaS software application for tracking personnel records, training courses and education history (<http://www.esosolutions.com/software/personnel-management>).
- 2.3. ESO Fire is a SaaS software application for NFIRS reporting (<http://www.esosolutions.com/software/fire>).

3. Third-Party Payer is responsible for the following products and Fees: N/A

4. **Implementation Phase:** Customer desires, and ESO agrees, to implement and train Customer during the period after the Effective Date of this Agreement but prior to the SaaS Subscription Start Date for the purpose of preparing Customer to utilize the Software and training Customer's end-users. Customer agrees that Customer shall not utilize ESO's Software as a primary source of electronic patient care record recording prior to the SaaS Subscription Start Date, and should Customer usage of the Software indicate this is the case (i.e., Customer is uploading more than 500 actual patient records per month through the Software during the Implementation Phase), ESO may immediately invoice Customer for an additional \$50,000.00 prior to the SaaS Subscription Start Date. Customer hereby agrees to timely pay for the following products and service according to the schedule below:

Product Name	Product Description	Quantity	Total Price/ Discounts
ESO Implementation and Configuration	One-time fee for ESO's advance implementation and configuration of EHR, CAD Integration, Cardiac Monitor, Billing Interface, etc.	1	\$65,000.00
EHR Training	Daily Rate	3 /Day	\$4,485.00
	Fee Type: One-Time		

List Price: \$69,485.00

Discounts: \$0.00

Tax: \$0.00

Total: \$69,485.00

5. As of the SaaS Subscription Start Date, Customer hereby agrees to timely pay for the following products according to the schedule below:

Product Name	Product Description	Quantity	Total Price/ Discounts
EHR Suite w/ QM & Mobile	Includes Quality Management, Ad Hoc Reports, Analytics, Patient Tracker. Allows for unlimited users, unlimited mobile applications, live support, state and federal data reporting, ongoing weekly web training, software updates and upgrades.  Fee Type: Recurring	125000 /Calls	\$116,990.00
CAD Integration	Allows for integration of CAD data into EHR mobile and web application. Ongoing maintenance included. Additional fees from your CAD vendor may apply.  Fee Type: Recurring	125000 /Incidents	\$4,995.00
Cardiac Monitor	Unlimited cardiac monitors, allows for import of cardiac monitor data via local or cloud integration. Ongoing maintenance included.  Fee Type: Recurring	125000 /Incidents	\$2,495.00
EHR Billing Standard Interface	Allows for integration of discrete ePCR data into third-party billing software. Ongoing maintenance included.  Fee Type: Recurring	125000 /Incidents	\$1,295.00
Interface - ESO EHR FIREHOUSE	Annual recurring cost. Allows for basic NFIRS data to be transmitted from ESO EHR to client's FIREHOUSE software for completion of NFIRS records.  Fee Type: Recurring	125000 /Incidents	\$ 995.00
Interface - ESO EHR FIREHOUSE Discount	FIREHOUSE ESO integration  Fee Type: Recurring		(\$ 995.00)
NEMSIS Data Import - one-time	  Fee Type: One-Time	X /Calls	\$12,995.00

List Price: \$139,765.00

Discounts: (\$995.00)

Tax: \$0.00

Total: \$138,770.00

6. All the Fees above will be invoiced by ESO as follows:

6.1 The Fees under Section 4, "Implementation Phase," shall be invoiced in advance on the Effective Date.

6.2 The Fees under Section 5 shall be invoiced upon the SaaS Subscription Start Date.

6.3 During the second year and any renewal years thereafter, 100% of the Fees shall become due on the anniversary of the SaaS Subscription Start Date.

**EXHIBIT B**  
**SUPPORT SERVICES ADDENDUM**

**1. DEFINITIONS.** Capitalized terms not defined below shall have the same meaning as in the General Terms & Conditions.

- 1.1. "Enhancement" means a modification, addition or new release of the Software that when added to the Software, materially changes its utility, efficiency, functional capability or application.
- 1.2. "E-mail Support" means ability to make requests for technical support assistance by e-mail at any time concerning the use of the then-current release of Software.
- 1.3. "Error" means an error in the Software, which significantly degrades performance of such Software as compared to ESO's then-published Documentation.
- 1.4. "Error Correction" means the use of reasonable commercial efforts to correct Errors.
- 1.5. "Fix" means the repair or replacement of object code for the Software or Documentation to remedy an Error.
- 1.6. "Initial Response" means the first contact by a Support Representative after the incident has been logged and a ticket generated. This may include an automated email response depending on when the incident is first communicated.
- 1.7. "Management Escalation" means, if the initial Workaround or Fix does not resolve the Error, notification of management that such Error(s) have been reported and of steps being taken to correct such Error(s).
- 1.8. "Severity 1 Error" means an Error which renders the Software completely inoperative (e.g. a User cannot access the Software due to unscheduled downtime or an Outage).
- 1.9. "Severity 2 Error" means an Error in which Software is still operable; however, one or more significant features or functionality are unavailable (e.g. a User cannot access a core component of the Software).
- 1.1. "Severity 3 Error" means any other error that does not prevent a User from accessing a significant feature of the Software (e.g. User is experiencing latency in reports).
- 1.2. "Severity 4 Error" means any error related to Documentation or a Customer Enhancement request.
- 1.3. "Status Update" means if the initial Workaround or Fix cannot resolve the Error, notification of the Customer regarding the progress of the Workaround or Fix.
- 1.4. "Online Support" means information available through ESO's website ([www.esosolutions.com](http://www.esosolutions.com)), including frequently asked questions and bug reporting via Live Chat.
- 1.5. "Support Representative" shall be ESO employee(s) or agent(s) designated to receive Error notifications from Customer, which Customer's Administrator has been unable to resolve.
- 1.6. "Update" means an update or revision to Software, typically for Error Correction.
- 1.7. "Upgrade" means a new version or release of Software or a particular component of Software, which improves the functionality or which adds functional capabilities to the Software and is not included in an Update. Upgrades may include Enhancements.
- 1.8. "Workaround" means a change in the procedures followed or data supplied by Customer to avoid an Error without substantially impairing Customer's use of the Software.

**2. SUPPORT SERVICES.**

- 2.1. Customer will provide at least one administrative employee (the "Administrator" or "Administrators") who will handle all requests for first-level support from Customer's employees with respect to the Software. Such support is intended to be the "front line" for support and information about the Software to Customer's Users. ESO will provide training, documentation, and materials to the Administrator to enable the Administrator to provide technical support to Customer's Users. The Administrator will notify a Support Representative of any Errors that the Administrator cannot resolve and assist ESO in information gathering.
- 2.2. ESO will provide Support Services consisting of (a) Error Correction(s); Enhancements, Updates and Upgrades that ESO, in its discretion, makes generally available to its customers without additional charge; and (c) E-mail Support, telephone support, and Online Support. ESO may use multiple forms of communication for purposes of submitting periodic status reports to Customer,

including but not limited to, messages in the Software, messages appearing upon login to the Software or other means of broadcasting Status Update(s) to multiple customers affected by the same Error, such as a customer portal.

- 2.3. ESO's support desk will be staffed with competent technical consultants who are trained in and thoroughly familiar with the Software and with Customer's applicable configuration. Telephone support and all communications will be delivered in intelligible English.
- 2.4. Normal business hours for ESO's support desk are Monday through Friday 7:00 am to 7:00 pm CT. Customer will receive a call back from a Support Representative after-hours for a Severity 1 Error.
3. **ERROR PRIORITY LEVELS.** Customer will report all Errors to ESO via e-mail ([support@esosolutions.com](mailto:support@esosolutions.com)) or by telephone (866-766-9471, option #3). ESO shall exercise commercially reasonable efforts to correct any Error reported by Customer in accordance with the priority level reasonably assigned to such Error by ESO.
  - 3.1. **Severity 1 Error.** ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within four hours; (iii) initiate Management Escalation promptly; and (iv) provide Customer with a Status Update within four hours if ESO cannot resolve the Error within four hours.
  - 3.2. **Severity 2 Error.** ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within eight hours; (iii) initiate Management Escalation within forty-eight hours if unresolved; and (iv) provide Customer with a Status Update within forty-eight hours if ESO cannot resolve the Error within forty-eight hours.
  - 3.3. **Severity 3 Error.** ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within three business days; and (iii) provide Customer with a Status Update within seven calendar days if ESO cannot resolve the Error within seven calendar days.
  - 3.4. **Severity 4 Error.** ESO shall (i) provide an Initial Response within seven calendar days.
4. **CONSULTING SERVICES.** If ESO reasonably believes that a problem reported by Customer is not due to an Error in the Software, ESO will so notify Customer. At that time, Customer may request ESO to proceed with a root cause analysis at Customer's expense as set forth herein or in a separate SOW. If ESO agrees to perform the investigation on behalf of Customer, then ESO's then-current and standard consulting rates will apply for all work performed in connection with such analysis, plus reasonable related expenses incurred. For the avoidance of doubt, Consulting Services will include customized report writing by ESO on behalf of Customer.
5. **EXCLUSIONS.**
  - 5.1. ESO shall have no obligation to perform Error Corrections or otherwise provide support for: (i) Customer's repairs, maintenance or modifications to the Software (if permitted); (ii) Customer's misapplication or unauthorized use of the Software; (iii) altered or damaged Software not caused by ESO; (iv) any third-party software; (v) hardware issues; (vi) Customer's breach of the Agreement; and (vii) any other causes beyond the ESO's reasonable control.
  - 5.2. ESO shall have no liability for any changes in Customer's hardware or software systems that may be necessary to use the Software due to a Workaround or Fix.
  - 5.3. ESO is not responsible for any Error Correction unless ESO can replicate such Error on its own software and hardware or through remote access to Customer's software and hardware.
  - 5.4. Customer is solely responsible for its selection of hardware, and ESO shall not be responsible the performance of such hardware even if ESO makes recommendations regarding the same.
6. **MISCELLANEOUS.** The parties acknowledge that from time-to-time ESO may update its support processes specifically addressed in this Exhibit and may do so by posting such updates to ESO's website or otherwise notifying Customer of such updates. Customer will accept updates to ESO's support procedures and any other terms in this Exhibit; provided however, that they do not materially decrease the level of Support Services that Customer will receive from ESO. THESE TERMS AND CONDITIONS DO NOT CONSTITUTE A PRODUCT WARRANTY. THIS EXHIBIT IS AN ADDITIONAL PART OF THE AGREEMENT AND DOES NOT CHANGE OR SUPERSEDE ANY TERM OF THE AGREEMENT EXCEPT TO THE EXTENT UNAMBIGUOUSLY CONTRARY THERETO.



**EXHIBIT C**  
**HIPAA BUSINESS ASSOCIATE ADDENDUM**

Customer and ESO Solutions, Inc. ("Business Associate") agree that (1) this HIPAA Business Associate Addendum is entered into for the benefit of Customer, which is a covered entity under the Privacy Standards ("Covered Entity").

Pursuant to the Agreement, Business Associate may perform functions or activities involving the use and/or disclosure of PHI on behalf of the Covered Entity, and therefore, Business Associate may function as a business associate. Business Associate, therefore, agrees to the following terms and conditions set forth in this HIPAA Business Associate Addendum ("Addendum").

1. Scope. This Addendum applies to and is hereby automatically incorporated into all present and future agreements and relationships, whether written, oral or implied, between Covered Entity and Business Associate, pursuant to which PHI is created, maintained, received or transmitted by Business Associate from or on behalf of Covered Entity in any form or medium whatsoever.
2. Definitions. For purposes of this Addendum, the terms used herein, unless otherwise defined, shall have the same meanings as used in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), or the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and any amendments or implementing regulations, (collectively "HIPAA Rules").
3. Compliance with Applicable Law. The parties acknowledge and agree that, beginning with the relevant effective date, Business Associate shall comply with its obligations under this Addendum and with all obligations of a business associate under HIPAA, HITECH, the HIPAA Rules, and other applicable laws and regulations, as they exist at the time this Addendum is executed and as they are amended, for so long as this Addendum is in place.
4. Permissible Use and Disclosure of PHI. Business Associate may use and disclose PHI as necessary to carry out its duties to a Covered Entity pursuant to the terms of the Agreement and as required by law. Business Associate may also use and disclose PHI (i) for its own proper management and administration, and (ii) to carry out its legal responsibilities. If Business Associate discloses Protected Health Information to a third party for either above reason, prior to making any such disclosure, Business Associate must obtain: (i) reasonable assurances from the receiving party that such PHI will be held confidential and be disclosed only as required by law or for the purposes for which it was disclosed to such receiving party; and (ii) an agreement from such receiving party to immediately notify Business Associate of any known breaches of the confidentiality of the PHI.
5. Limitations on Use and Disclosure of PHI. Business Associate shall not, and shall ensure that its directors, officers, employees, subcontractors, and agents do not, use or disclose PHI in any manner that is not permitted by the Agreement or that would violate Subpart E of 45 C.F.R. 164 ("Privacy Rule") if done by a Covered Entity. All uses and disclosures of, and requests by, Business Associate for PHI are subject to the minimum necessary rule of the Privacy Rule.
6. Required Safeguards to Protect PHI. Business Associate shall use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 ("Security Rule") with respect to electronic PHI, to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Addendum.
7. Reporting to Covered Entity. Business Associate shall report to the affected Covered Entity without unreasonable delay: (a) any use or disclosure of PHI not provided for by the Agreement of which it becomes aware; (b) any breach of unsecured PHI in accordance with 45 C.F.R. Subpart D of 45 C.F.R. 164 ("Breach Notification Rule"); and (c) any security incident of which it becomes aware. With regard to Security Incidents caused by or occurring to Business Associate, Business Associate shall cooperate with the Covered Entity's investigation, analysis, notification and mitigation activities, and except for Security Incidents caused by Covered Entity, shall be responsible for reasonable costs incurred by the Covered Entity for those activities. Notwithstanding the foregoing, Covered Entity acknowledges and shall be deemed to have received advanced notice from Business Associate that there are routine occurrences of: (i) unsuccessful attempts to penetrate computer networks or services maintained by Business Associate; and (ii) immaterial incidents such as "pinging" or "denial of services" attacks.
8. Mitigation of Harmful Effects. Business Associate agrees to mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate in violation of the requirements of the Agreement, including, but not limited to, compliance with any state law or contractual data breach requirements.
9. Agreements by Third Parties. Business Associate shall enter into an agreement with any subcontractor of Business Associate that creates, receives, maintains or transmits PHI on behalf of Business Associate. Pursuant to such agreement, the subcontractor shall agree to be bound by the same or greater restrictions, conditions, and requirements that apply to Business Associate under this Addendum with respect to such PHI.
10. Access to PHI. Within five (5) business days of a request by a Covered Entity for access to PHI about an individual contained in a Designated Record Set, Business Associate shall make available to the Covered Entity such PHI for so long as such information is maintained by Business Associate in the Designated Record Set, as required by 45 C.F.R. 164.524. In the event any individual delivers directly to Business Associate a request for access to PHI, Business Associate shall within five (5) business days forward such request to the Covered Entity.
11. Amendment of PHI. Within five (5) business days of receipt of a request from a Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set),

Business Associate shall provide such information to the Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. 164.526. In the event any individual delivers directly to Business Associate a request for amendment to PHI, Business Associate shall within five (5) business days forward such request to the Covered Entity.

12. Documentation of Disclosures. Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528 and HITECH.
13. Accounting of Disclosures. Within five (5) business days of notice by a Covered Entity to Business Associate that it has received a request for an accounting of disclosures of PHI, Business Associate shall make available to a Covered Entity information to permit the Covered Entity to respond to the request for an accounting of disclosures of PHI, as required by 45 C.F.R. 164.528 and HITECH.
14. Other Obligations. To the extent that Business Associate is to carry out one or more of a Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with such requirements that apply to the Covered Entity in the performance of such obligations.
15. Judicial and Administrative Proceedings. In the event Business Associate receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, the affected Covered Entity shall have the right to control Business Associate's response to such request, provided that, such control does not have an adverse impact on Business Associate's compliance with existing laws. Business Associate shall notify the Covered Entity of the request as soon as reasonably practicable, but in any event within seven (7) business days of receipt of such request.
16. Availability of Books and Records. Business Associate hereby agrees to make its internal practices, books, and records available to the Secretary of the Department of Health and Human Services for purposes of determining compliance with the HIPAA Rules.
17. Breach of Contract by Business Associate. In addition to any other rights a party may have in the Agreement, this Addendum or by operation of law or in equity, either party may: i) immediately terminate the Agreement if the other party has violated a material term of this Addendum; or ii) at the non-breaching party's option, permit the breaching party to cure or end any such violation within the time specified by the non-breaching party. The non-breaching party's option to have cured a breach of this Addendum shall not be construed as a waiver of any other rights the non-breaching party has in the Agreement, this Addendum or by operation of law or in equity.
18. Effect of Termination of Agreement. Upon the termination of the Agreement or this Addendum for any reason, Business Associate shall return to a Covered Entity or, at the Covered Entity's direction, destroy all PHI received from the Covered Entity that Business Associate maintains in any form, recorded on any medium, or stored in any storage system. This provision shall apply to PHI that is in the possession of Business Associate, subcontractors, and agents of Business Associate. Business Associate shall retain no copies of the PHI. Business Associate shall remain bound by the provisions of this Addendum, even after termination of the Agreement or Addendum, until such time as all PHI has been returned or otherwise destroyed as provided in this Section. For the avoidance of doubt, de-identified Customer Data shall not be subject to this provision.
19. Injunctive Relief. Business Associate stipulates that its unauthorized use or disclosure of PHI while performing services pursuant to this Addendum would cause irreparable harm to a Covered Entity, and in such event, the Covered Entity shall be entitled to institute proceedings in any court of competent jurisdiction to obtain damages and injunctive relief.
20. Owner of PHI. Under no circumstances shall Business Associate be deemed in any respect to be the owner of any PHI created or received by Business Associate on behalf of a Covered Entity.
21. Data Usage Provision. Business Associate may aggregate and de-identify PHI and/or create limited data sets for use in research, evaluation and for publication or presentation of patient care quality improvement practices and outcomes. The Parties understand and agree that such aggregated and de-identified data is no longer PHI subject to the provisions of HIPAA and agree that Business Associate may retain such limited data sets indefinitely thereafter. Business Associate agrees that it will comply with all terms of this Agreement with respect to the limited data sets and that it shall not re-identify or attempt to re-identify the information contained in the limited data set, nor contact any of the individuals whose information is contained in the limited data set.
22. Safeguards and Appropriate Use of Protected Health Information. Covered Entity is responsible for implementing appropriate privacy and security safeguards to protect its PHI in compliance with HIPAA. Without limitation, it is Covered Entity's obligation to:
  - 22.1. Not include PHI in information Covered Entity submits to technical support personnel through a technical support request or to community support forums. In addition, Business Associate does not act as, or have the obligations of a Business Associate under the HIPAA Rules with respect to Customer Data once it is sent to or from Covered Entity outside ESO's Software over the public Internet; and
  - 22.2. Implement privacy and security safeguards in the systems, applications, and software Covered Entity controls, configures and connects to ESO's Software.
23. Third Party Rights. The terms of this Addendum do not grant any rights to any parties other than Business Associate and the Covered Entity.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

ESO Solutions, Inc.

Customer

  
[Signature]

Chris Dillie  
[Printed Name]

CEO & President  
[Title]

  
[Signature]

KATHY BRYANT  
[Printed Name]

CHAIRMAN  
[Title]

**EXHIBIT D**  
**Pricing Memorandum**

ESO offers subscriptions to its Software on a tier-based system derived from Customer electronic patient care record volume from October 1<sup>st</sup> to September 30<sup>th</sup> of each year ("*SaaS Subscription Period*"). Annual record volume may be estimated by averaging no less than six (6) consecutive months of Customer record volume from the current Term and multiplying the result by twelve. Should the annual record volume estimation described above result in Customer rising into a new pricing tier, ESO shall inform Customer of the impending change in pricing as set forth above. Increased Customer pricing shall take effect as set forth above.

As of the effective date of this Agreement, Customer and ESO agree that Customer annual electronic patient care record volume per year has been estimated to fall between 100,000 – 125,000 records per year. Should Customer annual record volume be estimated to rise to 125,001 – 150,000 records per year, the following pricing shall apply:

EHR Suite w/ QM & Mobile annual subscription:	\$137,990.00
Billing Standard Interface:	\$1,595.00
Cardiac Monitor Integration:	\$2,995.00
CAD Integration annual subscription:	\$4,995.00
Firehouse Interface:	\$0.00
Annually recurring grand total:	\$147,575.00

Should Customer annual record volume be estimated to rise to 150,001 – 175,000 records per year, the following pricing shall apply:

EHR Suite w/ QM & Mobile annual subscription:	\$152,990.00
Billing Standard Interface:	\$1,595.00
Cardiac Monitor Integration:	\$2,995.00
CAD Integration annual subscription:	\$5,995.00
Firehouse Interface:	\$0.00
Annually recurring grand total:	\$163,575.00

Should Customer annual record volume be estimated to rise to 175,001 – 200,000 records per year, the following pricing shall apply:

EHR Suite w/ QM & Mobile annual subscription:	\$167,990.00
Billing Standard Interface:	\$1,595.00
Cardiac Monitor Integration:	\$2,995.00
CAD Integration annual subscription:	\$5,995.00
Firehouse Interface:	\$0.00
Annually recurring grand total:	\$178,575.00

Should Customer annual record volume be estimated to rise to 200,001 – 300,000 records per year, the following pricing shall apply:

EHR Suite w/ QM & Mobile annual subscription:	\$204,990.00
Billing Standard Interface:	\$2,495.00
Cardiac Monitor Integration:	\$2,995.00
CAD Integration annual subscription:	\$5,995.00
Firehouse Interface:	\$0.00
Annually recurring grand total:	\$216,475.00



Should Customer annual record volume be estimated to rise above 300,001 records per year, the following pricing shall apply:

EHR Suite w/ QM & Mobile annual subscription:	\$269,995.00
Billing Standard Interface:	\$2,495.00
Cardiac Monitor Integration:	\$2,995.00
CAD Integration annual subscription:	\$5,995.00
Firehouse Interface:	\$0.00
Annually recurring grand total:	\$281,480.00

Notwithstanding the foregoing, ESO reserves the right to increase the fees described in this exhibit by no more than two percent (2%) per year for each year the Agreement is in effect beginning October 1, 2020. Furthermore, ESO is under no obligation to provide this pricing in the event this Agreement is terminated.

## **ADDITIONAL TERMS AND CONDITIONS TO MASTER SUBSCRIPTION AND LICENSE AGREEMENT**

This Additional Terms and Conditions to Master Subscription and License Agreement (this "Additional Terms"), is entered into by and between ESO Solutions, Inc., 11500 Alterra Parkway Ste 100, Austin, TX 78758 ("ESO") and Marion County, a political subdivision of the State of Florida, 601 SE 25<sup>th</sup> Ave., Ocala, FL 34471 ("Customer"), whereby it is agreed as follows:

**WHEREAS**, the parties are contemporaneously hereto entering into a Master Subscription and License Agreement (the "Agreement"),

**WHEREAS**, the Agreement requires mandatory public records provisions pursuant to Chapter 119.0701, Florida Statutes; and,

**WHEREAS**, the parties wish to add these Additional Terms to the Agreement in order to comply with the statutorily imposed language, and in consideration of the mutual covenants and conditions contained herein, it is hereby

### **AGREED that:**

1. This Additional Terms shall amend and become a part of the Agreement.
2. If, under the Agreement, ESO is providing services and is acting on behalf of Customer as provided under section 119.011(2), Florida Statutes, ESO shall:
  - a. Keep and maintain public records required by Customer to perform the Agreement;
  - b. Upon request from Customer's custodian of records, provide Customer with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
  - c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if ESO does not transfer the records to Customer; and,
  - d. Upon completion of the Agreement, transfer, at no cost, to Customer, all public records in possession of ESO or keep and maintain public records required by Customer to perform the Agreement. If ESO transfers all public records to Customer upon completion of the Agreement, ESO shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If ESO keeps and maintains public records upon completion of the Agreement, ESO shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Customer upon request from Customer's custodian of public records in a format that is compatible with the information technology systems of Customer.
3. **IF ESO HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ESO'S DUTY TO PROVIDE PUBLIC RECORDS**


**RELATING TO THE AGREEMENT, CONTACT CUSTOMER'S CUSTODIAN OF  
PUBLIC RECORDS AT:**

**Public Relations  
601 SE 25th Ave.  
Ocala, FL 34471  
Phone: 352-438-2300  
Fax: 352-438-2309  
Email: PublicRelations@MarionCountyFL.org**

4. No other terms or conditions of the Agreement are negated or changed as a result of this Additional Terms and Conditions.


IN WITNESS THEREOF, the parties have entered this ADDITIONAL TERMS AND CONDITIONS TO MASTER SUBSCRIPTION AND LICENSE AGREEMENT on the date of the last signature below.

ESO SOLUTIONS, INC.

By:   
Printed Name: Chris Dillie  
Its: CEO & President  
Date: 9/5/18

ATTEST:

MARION COUNTY, A POLITICAL  
SUBDIVISION OF THE STATE OF FLORIDA

 SEP 19 2018  
DAVID R. ELLSPERMANN, DATE  
CLERK OF COURT

 SEP 18 2018  
KATHY BRYANT DATE  
CHAIRMAN

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

BCC APPROVED:  
ACCEPTANCE DATE: SEP 18 2018

 9-18-18  
MATTHEW MINTER, DATE  
COUNTY ATTORNEY