

HEALTH DATA EXCHANGE PARTICIPATION AGREEMENT

This Participation Agreement (the "**Agreement**") is entered into this 21 day of May, 2015 (the "**Effective Date**"), by and between **ESO Solutions, Inc.**, a Texas corporation with its principal place of business at 9020 N Capital of Texas Highway, Building 11-300, Austin, Texas 78759 ("**ESO**"), and the City of Hollywood, a municipal corporation of the State of Florida (the "**Participant**") (each a "**Party**" and collectively the "**Parties**").

WHEREAS, ESO is in the business of providing Health Data Exchange ("**HDE**") services (the "**Services**") to businesses and municipalities which provide emergency patient care;

WHEREAS, Participant seeks to share medical data specific to emergency medical services and receive outcome data back;

NOW, THEREFORE, the Parties, intending to be bound, agree as follows:

1. Defined Terms.

Except as otherwise specified herein, all capitalized terms used in this Agreement shall have the meanings set forth below. Any capitalized term not defined below shall have the meaning provided by HIPAA. In the event of any conflict between the following definitions and HIPAA, HIPAA shall govern.

- (a) "**Participant**" means any Covered Entity participating, contributing, using and/or disclosing Shared Patient Information.
 - (b) "**Patient**" means an individual who: (i) meets certain Shared Record Eligibility Requirements, and (ii) has received or is currently seeking Health Services from one or more of the Participants. For purposes of this Agreement, the term "**Patient**" shall be construed to include covered beneficiaries of a Participant that is a Health Plan.
 - (c) "**Protected Health Information**" or "**PHI**" shall have the meaning set forth in HIPAA. PHI may include, but is not limited to, written and electronic information relating to the diagnosis, treatment, tests, prognosis, admission, discharge, transfer, prescription, eligibility, claims and other data implicitly or explicitly identifying a Patient to whom items, services, coverage or reimbursement is provided by a Participant, and which information is provided, stored or accessed by a Participant. All references herein to PHI shall be construed to include electronic PHI, or ePHI, as that term is defined by HIPAA.
 - (d) "**Shared Patient Information**" means those specific data elements about Patients and Health Services that are provided electronically for purposes of inclusion in the Shared Record.
 - (e) "**Shared Record**" means the Shared Patient Information, including PHI and other data, maintained by ESO and contributed to and utilized by the Participants.
2. **Services.** ESO shall provide to Participant, during the Term, the Services, including such services and products as may be identified on **Exhibit A**. The Services are provided through ESO's proprietary software that is hosted and operated by ESO over the Internet (the "**Software**"). For purposes of this Agreement, the Services shall permit Participant to receive outcome data back from participating hospitals.
3. **Term.** The Term of this Agreement shall commence on the Effective Date and shall terminate one year after the Effective Date ("**Initial Term**"). THE AGREEMENT SHALL AUTOMATICALLY RENEW FOR SUCCESSIVE RENEWAL TERMS OF ONE YEAR, UNLESS ONE PARTY GIVES THE OTHER PARTY WRITTEN NOTICE THAT THE AGREEMENT WILL NOT RENEW, AT LEAST THIRTY (30) DAYS PRIOR TO THE END OF THE CURRENT TERM.
4. **Subscription Fees, Invoices and Payment Terms.**
- a. **Subscription Fees.** Participant shall pay to ESO the fees for the Services as described in **Exhibit A** (the "**Subscription Fees**"). ESO shall have the option to increase pricing, except during the Initial Term, as long as it provides at least sixty (60) days' notice of such increase to Participant prior to automatic renewal under Section 2 above.
 - b. **Invoices; Payment of Invoices.** Participant shall be invoiced as explained in **Exhibit A**. Participant shall pay invoices received from ESO within thirty (30) days of receipt (the "**Due Date**").
 - c. **Disputed Invoices.** If Participant in good faith disputes any portion of an ESO invoice, Participant shall submit to ESO, by no later than thirty (30) days following the Due Date, full payment of the undisputed portion of the invoice together with a written explanation

identifying and substantiating the disputed amount (including any documentation supporting its position). If Participant does not report a dispute within thirty (30) days following the Due Date of the applicable invoice, that invoice shall be deemed accepted and Participant shall have waived its right to dispute it. Any disputed amounts determined or agreed to be payable to ESO shall be due within ten (10) days of the Parties' agreement resolving the dispute.

5. Termination.

- a. Termination by Participant. Participant may terminate the agreement with thirty (30) days prior written notice, provided that notice arrives at least thirty (30) days prior to the end of the current term.
- b. Termination by Participant for ESO Default. If ESO fails to perform a material obligation under this Agreement and does not remedy such failure within thirty (30) days following written notice from Participant ("**ESO Default**"). Participant may terminate this Agreement without any further liability except for the payment of all accrued but unpaid Subscription Fees owed through the effective date of termination. If ESO is unable to provide Service(s) for ninety (90) consecutive days due to a Force Majeure event as defined in Section 16a, *Force Majeure*, Participant may terminate the affected Service(s) without liability to ESO.
- c. Termination by ESO for Participant Default. ESO may terminate this Agreement with no further liability if (i) excluding disputed invoices under Section 3.c., Participant fails to make payment as required under this Agreement and such failure remains uncorrected for thirty (30) days following written notice from ESO, (ii) Participant fails to perform any other material obligation under this Agreement and does not remedy such failure within thirty (30) days following written notice from ESO (hereinafter collectively referred to as "**Participant Default**"). In the event of a Participant Default, ESO shall have the right to (i) terminate this Agreement; (ii) suspend all Service(s) being provided to Participant, (iii) terminate the right to use the Software, (iv) apply interest to the amount past due, at the rate of one and one-half percent (1½%) (or the maximum legal rate, if less) of the unpaid amount per month, (v) offset any amounts that are owed to Participant by ESO against the past due amount then owed to ESO, and/or (vi) take any action in connection with any other right or remedy ESO may have under this Agreement, at law or in equity. If this Agreement is terminated due to a Participant Default, Participant shall remain liable for all Subscription Fees owed through the effective date of termination for the Services provided through such date.

6. **System Maintenance.** In the event ESO determines that it is necessary to interrupt the Services or that there is a potential for the Services to be interrupted for the performance of system maintenance, ESO will use commercially reasonable efforts to notify Participant prior to the performance of such maintenance. Routine maintenance will be scheduled during non-peak hours (midnight to 6 a.m. CST). In no event shall interruption for system maintenance constitute a failure of performance by ESO.

7. **Access to Internet.** Participant has sole responsibility for obtaining, maintaining, and securing its connections to the Internet, and ESO makes no representations to Participant regarding the reliability, performance or security of any particular network or provider.

8. Use and Support of Services; Software Rights.

- a. Support and Updates. During the term, ESO shall provide to Participant the support services and will meet the service levels as set forth on **Exhibit B** attached hereto.
- b. Other Services. Upon the written request by Participant, ESO may provide services related to the Software other than the standard support, at ESO's then-current rates or as otherwise negotiated by the Parties. This may include on-site consultation, configuration, and initial technical assistance and training on the use and support of the Software.
- c. Software Ownership and Restrictions. This Agreement does not convey any rights of ownership in or title to the Software associated with the Services. All right, title and interest in the Software and any copies or derivative works thereof will remain the property of ESO. Participant will not: (a) copy, disassemble, reverse engineer or modify the Software; (b) allow any unaffiliated third party to use the Software; (c) use the Software as a component in any product or service provided by Participant to a third party; (d) transfer, sell, assign, or otherwise convey the Software; or (e) remove any proprietary notices placed on or contained within the Software. Participant will keep the Software free and clear of all claims, liens, and encumbrances.
- d. Title. ESO hereby represents and warrants to Participant that ESO is the owner of the Software or otherwise has the right to grant to Participant the rights set forth in this Agreement. In the event of any breach or threatened breach of the foregoing representation and warranty, Participant's sole remedy shall be for ESO, at its option and expense, to: (i) procure the right to continue using the Software, (ii) replace or modify the Software to avoid a breach, such replacement or modification shall be substantially and materially similar to the replaced or modified Software.

9. **Indemnification.** Intentionally omitted.

10. **Limitation of Liability.** NOTWITHSTANDING ANY OTHER PROVISION HEREOF, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST REVENUES OR COST OF PURCHASING REPLACEMENT SERVICES) ARISING OUT OF OR RELATING TO THIS

AGREEMENT. ADDITIONALLY, ESO SHALL NOT BE LIABLE TO PARTICIPANT FOR ANY ACTUAL DAMAGES IN EXCESS OF THE AGGREGATE AMOUNT THAT ESO HAS, PRIOR TO SUCH TIME, COLLECTED FROM PARTICIPANT WITH RESPECT TO SERVICES DELIVERED HEREUNDER. FURTHERMORE, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER, EITHER IN CONTRACT OR IN TORT, FOR PROTECTION FROM UNAUTHORIZED ACCESS OF PARTICIPANT DATA OR FROM UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF PARTICIPANT DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION NOT CONTROLLED BY ESO, THROUGH ACCIDENT OR FRAUDULENT MEANS OR DEVICES. THIS SECTION SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT. EACH PARTY ACKNOWLEDGES THAT THIS LIMITATION OF LIABILITY WAS SPECIFICALLY BARGAINED FOR AND IS ACCEPTABLE TO PARTICIPANT. FURTHER, EACH PARTY'S WILLINGNESS TO AGREE TO THE LIMITATIONS CONTAINED IN THIS SECTION WAS MATERIAL TO ENTERING INTO THIS AGREEMENT.

11. **Acknowledgements and Disclaimer of Warranties.** Participant acknowledges that ESO cannot guarantee that there will never be any outages in ESO's network and that no credits shall be given in the event Participant's access to ESO's network is interrupted. PHI IS PROVIDED SOLELY "AS IS." THE SERVICES ARE PROVIDED "AS IS." UNLESS OTHERWISE SPECIFIED HEREIN, ESO MAKES NO REPRESENTATION OR WARRANTY TO PARTICIPANT OR ANY OTHER PERSON OR ENTITY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR A PARTICULAR PURPOSE, OF ANY SERVICE OR SOFTWARE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER (INCLUDING WITHOUT LIMITATION THAT THERE WILL BE NO IMPAIRMENT OF DATA OR THAT SERVICES WILL BE UNINTERRUPTED OR ERROR FREE). ALL OF WHICH WARRANTIES BY ESO ARE HEREBY EXCLUDED AND DISCLAIMED, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

PARTICIPANT ACKNOWLEDGES THAT THE BENEFITS OF HIE DEPEND ON OTHER HEALTHCARE PROVIDERS PARTICIPATING. PARTICIPANT ACKNOWLEDGES THAT ESO DOES NOT GUARANTEE THAT ANY PARTICULAR EMS AGENCY, HOSPITAL, HIE, OR OTHER HEALTHCARE PROVIDER WILL AGREE TO PARTICIPATE. ESO DOES NOT GUARANTEE THAT IT WILL PROVIDE DATA FROM ANY PARTICULAR PROVIDER ABSENT THAT PROVIDER'S CONSENT.

12. **Confidential Information.**

- a. "***Confidential Information***" shall mean all information disclosed orally or in writing by one party ("***Disclosing Party***") to the other party ("***Receiving Party***") related to the technology, intellectual property assets, financial or business plans and affairs, financial statements, internal management tools and systems, operations, or business plans of the Disclosing Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure should reasonably be treated as confidential, provided such information is clearly marked "CONFIDENTIAL" or "PROPRIETARY" upon delivery, or for verbal information, provided the Disclosing Party identifies the information as confidential at the time disclosed and provides a written summary of such information to the Receiving Party within fifteen (15) days of such verbal disclosure. Confidential Information does not include any information that (i) was already known by the Receiving Party free of any obligation to keep it confidential at the time of its disclosure; (ii) becomes publicly known through no act or fault of the Receiving Party; (iii) is rightfully received from a third person without knowledge of any confidential obligation; (iv) is independently acquired or developed without violating any of the obligations under this Agreement; or (v) is approved for release by written authorization of the Disclosing Party.
- b. A Receiving Party, upon receipt of Confidential Information, shall not directly or indirectly disclose, divulge, publish, disseminate, use, reproduce, copy, or create derivative works of or permit access to any Confidential information except as authorized under this Agreement or otherwise required by law. Each Party shall use Confidential Information only for purposes set forth in this Agreement and shall use reasonable and appropriate safeguards to protect Confidential Information from disclosure using the same degree of care used to protect its own Confidential Information, but in no event less than a commercially reasonable degree of care. Confidential Information shall remain the property of the Disclosing Party and shall be returned to the Disclosing Party or destroyed upon request of the Disclosing Party in accordance with the terms of this Agreement.
- c. Notwithstanding the foregoing sections 12a and 12b, ESO hereby acknowledges that as PARTICIPANT is a governmental entity, PARTICIPANT is subject to Chapter 119, Florida Statutes, "Public Records Law." Any confidentiality relating to the disclosure of information and software will be in accordance with Chapter 119, Florida Statutes.

13. **Permitted Uses and Disclosures of PHI.**

- a. Participant agrees to access, use and disclose the Shared Record in accordance with applicable State and federal law, including but not limited to 45 C.F.R. Section 164.506(c).
- b. Participant agrees not to access, use or disclose the Shared Record to compete with any other Participant and/or to solicit patients from any other Participant.

- c. Participant agrees to utilize hospital outcome data for its internal quality improvement and collection process only. Participant will not use hospital outcome data to compare the performance between hospitals without written authorization from participating hospitals and ESO.
- d. Participant agrees to notify ESO immediately upon confirmation of a data breach or significant security threat and cooperate with ESO to investigate, remediate and respond to such breach or security threat.
- e. Participant grants ESO the right to collect and store its data for aggregate reporting purposes, but in no event shall ESO disclose PHI unless permitted by law. Moreover, ESO will not identify Participant without Participant's consent.

14. General Provisions.

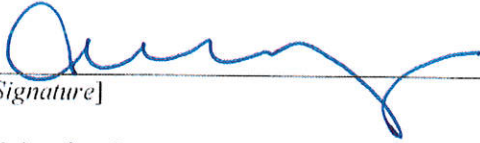
- a. Force Majeure. Neither Party shall be liable to the other, nor deemed in default under this Agreement if and to the extent that such Party's performance of this Agreement is delayed or prevented by reason of Force Majeure, which is defined to mean an event that is beyond the reasonable control of the affected Party and occurs without such Party's fault or negligence.
- b. Entire Agreement. This Agreement, including all schedules, exhibits, addenda and any Business Associate Agreement (as that term is used in the Health Insurance Portability and Accountability Act and related regulations) (see Exhibit C) are incorporated herein by reference, and constitute the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this agreement shall be effective unless in writing and signed by the Party against whom the modification, amendment or waiver is asserted.
- c. Governing Law. This Agreement shall be governed by the laws of the State of Florida without regard to choice or conflict of law rules.
- d. Arbitration. Intentionally omitted.
- e. No Press Releases without Consent. Neither Party may use the other Party's name or trademarks, nor issue any publicity or public statements concerning the other Party or the existence or content of this Agreement, without the other Party's prior written consent. Notwithstanding, Participant agrees that ESO may use Participant's name and logo in ESO sales presentations, without Participant's prior written consent, during the Term of this Agreement, but only for the purposes of identifying the Participant as a customer of ESO. Likewise, Participant may use ESO's name and logo to identify ESO as a vendor of Participant.
- f. 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.
- g. Waiver. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. If Participant has made any change to the Agreement that Participant did not bring to ESO's attention in a way that is reasonably calculated to put ESO on notice of the change, the change shall not become part of the Agreement.
- h. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- i. Taxes and Fees. This Agreement is exclusive of all taxes and fees.
- j. Independent Contractor. Nothing in this Agreement shall be construed to create: (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates; or (ii) a relationship of employer and employee between the Parties. ESO is an independent contractor and not an agent of Participant.
- k. Counterparts; Execution. This Agreement and any amendments hereto may be executed by the Parties individually or in any combination, in one or more counterparts, each of which shall be an original and all of which shall together constitute one and the same agreement. Execution and delivery of this Agreement and any amendments by the Parties shall be legally valid and effective through: (i) executing and delivering the paper copy of the document, (ii) transmitting the executed paper copy of the documents by facsimile transmission or electronic mail in "portable document format" ("*.pdf*") or other electronically scanned format, or (iii) creating, generating, sending, receiving or storing by electronic means this Agreement and any amendments, the execution of which is accomplished through use of an electronic process and executed or adopted by a Party with the intent to execute this Agreement (i.e. "*electronic signature*" through a process such as DocuSign®). In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the Party against whom enforcement of this Agreement is sought.
- l. Notice. All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (i) personal delivery; (ii) certified or

registered United States mail, return receipt requested; (iii) overnight delivery service with proof of delivery, or (iv) fax. Notices shall be sent to the addresses below. No Party to this Agreement shall refuse delivery of any notice hereunder.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned expressly agree and warrant that they are authorized to sign and enter into this Agreement on behalf of the Party for which they sign and have executed this Agreement on the Effective Date first written above.

ESO SOLUTIONS, INC.:



[Signature]

Elaine Gorden

[Printed Name]

Chief Financial Officer

[Title]

4/6/15

[Date]

PARTICIPANT

See Next Page for City Signatures

EB

[Signature]

[Printed Name]

[Title]

[Date]

DESCRIPTION OF AGREEMENT:

ESO SOLUTIONS, INC. (ESO) SHALL PROVIDE SERVICES THROUGH ESO PROPRIETARY SOFTWARE THAT IS HOSTED AND OPERATED BY ESO OVER THE INTERNET. FOR THE PURPOSES OF THE AGREEMENT, THE SERVICES SHALL PERMIT PARTICIPANT TO RECEIVE OUTCOME DATA BACK FROM PARTICIPATING HOSPITALS.

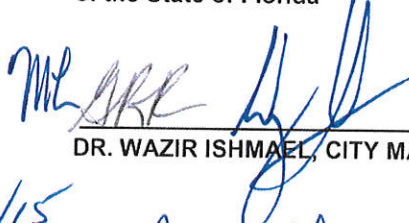
CITY OF HOLLYWOOD, a municipal corporation

of the State of Florida

ATTEST:


PATRICIA CERNY, MMC
CITY CLERK

5/21/15


DR. WAZIR ISHMAEL, CITY MANAGER

EB



MATT LALLA, DIRECTOR OF FINANCIAL SERVICES

ENDORSED AS TO FORM & LEGALITY
For the use and reliance of the City of
Hollywood, Florida, only.

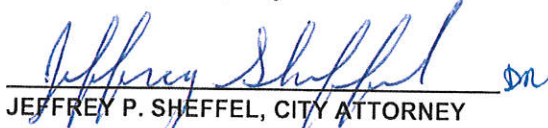

JEFFREY P. SHEFFEL, CITY ATTORNEY

EXHIBIT A
Annual Subscription Fee Schedule

Participant hereby selected the following Services, at the fees indicated:

Product	Quantity	List Price	Total Price	Line Item Description
HDE - ESO ePCR Connection	1.00	\$2,500.00	\$2,500.00	Annually Recurring Fee
Grand Total			\$2,500.00	

PAYMENT TERMS AND PAYMENT MILESTONES

The subscription year for Services shall begin upon execution of this Agreement or upon the commencement of active work on software implementation, whichever date comes later. Broward County, Florida with its principal place of administration at 115 S. Andrews Ave., Room 409, Fort Lauderdale, FL 33301-1872 has agreed to pay for the first year of the annually recurring Subscription Fee above. In the event Customer desires to continue receiving Services after the first year, ongoing annual Subscription Fees will be paid by Customer to ESO. In the event Broward County does not pay for the first year of the Subscription Fees or any portion thereof and Customer wants to continue receiving Services, then the fee shall be Customer's sole responsibility. Customer agrees to pay the Subscription Fee annually in advance for each year this Agreement is in effect.

EXHIBIT B

Support Services and Service Levels

This Exhibit describes the software support services ("**Support Services**") that ESO will provide and the service levels that ESO will meet.

1. **Definitions.**

Unless defined otherwise herein, capitalized terms used in this Exhibit shall have the same meaning as set forth in the Agreement.

- (a) "**Customer Service Representative**" shall be the person at ESO designated by ESO to receive notices of Errors encountered by Participant that Participant's Administrator has been unable to resolve.
- (b) "**Error**" means any failure of the Software to conform in any material respect with its published specifications.
- (c) "**Error Correction**" means a bug fix, patch, or other modification or addition that brings the Software into material conformity with its published performance specifications.
- (d) "**Priority A Error**" means an Error that renders the Software inoperative or causes a complete failure of the Software.
- (e) "**Priority B Error**" means an Error that substantially degrades the performance of the Software or materially restricts Participant's use of the Software.
- (f) "**Priority C Error**" means an Error that causes only a minor impact on Participant's use of the Software.
- (g) "**Update**" means any new commercially available or deployable version of the Software, which may include Error Corrections, enhancements or other modifications, issued by ESO from time to time to its Participants.
- (h) "**Normal Business Hours**" means 8:00 am to 5:00 pm Monday through Friday, Central Time Zone.

2. **Participant Obligations.**

Participant will provide at least one administrative employee (the "**Administrator**" or "**Administrators**") who will handle all requests for first-level support from Participant's employees with respect to the Software. Such support is intended to be the "front line" for support and information about the Software to Participant's employees. ESO will provide training, documentation, and materials to the Administrators to enable the Administrators to provide technical support to Participant's employees. The Administrators will refer any Errors to ESO's Participant Service Representative that the Administrators cannot resolve, pursuant to Section 3 below; and the Administrators will assist ESO in gathering information to enable ESO to identify problems with respect to reported Errors.

3. **Support Services.**

- (a) **Scope.** As further described herein, the Support Services consist of: (i) Error Corrections that the Administrator is unable to resolve, and (ii) periodic delivery of Error Corrections and Updates. The Support Services will be available to Participant during normal business hours, to the extent practicable. Priority A Errors encountered outside normal business hours may be communicated to the Participant Service Representative via telephone or email. Priority B and C Errors encountered outside normal business hours shall be communicated via email.
- (b) **Procedure.**
 - (i) **Report of Error.** In reporting any Error, the Participant's Administrator will describe to ESO's Participant Service Representative the Error in reasonable detail and the circumstances under which the Error occurred or is occurring; the Administrator will initially classify the Error as a Priority A, B or C Error. ESO reserves the right to reclassify the Priority of the Error.
 - (ii) **Efforts Required.** ESO shall exercise commercially reasonable efforts to correct any Error reported by the Administrator in accordance with the priority level assigned to such Error by the Administrator. Errors shall be communicated to ESO's Participant Service Representative after hours as indicated below, depending on the priority level of the Error. In the event of an Error, ESO will within the time periods set forth below, depending upon the priority level of the Error, commence verification of the Error; and, upon verification, will commence Error Correction. ESO will work diligently to verify the Error and, once an Error has been verified, and until an Error Correction has been provided to the Administrator, shall use commercially reasonable, diligent efforts to provide a workaround for the Error as soon as reasonably practicable. ESO will provide the Administrator with periodic reports on the status of the Error Correction on the frequency as indicated below.

<u>Priority of Error</u>	<u>Communicating Error to ESO outside Normal Business Hours</u>	<u>Time in Which ESO Will Commence Verification</u>	<u>Frequency of Periodic Status Reports</u>

Priority A	Telephone or email	Within 8 hours of notification	Every 4 hours until resolved
Priority B	Email	Within 1 business day of notification	Every 6 hours until resolved
Priority C	Email	Within two calendar weeks of notification	Every week until resolved

4. ESO Server Administration.

- (a) ESO is responsible for maintenance of Server hardware. Server administration includes:
 - (i) Monitoring and Response
 - (ii) Service Availability Monitoring
 - (iii) Backups
 - (iv) Maintenance
 - A. Microsoft Patch Management
 - B. Security patches to supported applications and related components
 - C. Event Log Monitoring
 - D. Log File Maintenance
 - E. Drive Space Monitoring
 - (v) Security
 - (vi) Virus Definition & Prevention
 - (vii) Firewall

EXHIBIT C
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("**Agreement**") is entered into by and between ESO Solutions, Inc. ("**Vendor**"), a Texas corporation, and Participant ("**Covered Entity**"), as of the Effective Date of the Subscription Agreement, for the purpose of setting forth Business Associate Agreement terms between Covered Entity and Vendor. Covered Entity and Vendor each are referred to as a "**Party**" and collectively as the "**Parties**." This Agreement shall commence on the Effective Date set forth above.

WHEREAS, Covered Entity, owns, operates, manages, performs services for, otherwise are affiliated with or are themselves a Covered Entity as defined in the federal regulations at 45 C.F.R. Parts 160 and 164 (the "**Privacy Standards**") promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**") and the Health Information Technology for Economic and Clinical Health Act of 2009 ("**HITECH**");

WHEREAS, pursuant to HIPAA and HITECH, the U.S. Department of Health & Human Services ("**HHS**") promulgated the Privacy Standards and the security standards at 45 C.F.R. Parts 160 and 164 (the "**Security Standards**") requiring certain individuals and entities subject to the Privacy Standards and/or the Security Standards to protect the privacy and security of certain individually identifiable health information ("**Protected Health Information**" or "**PHI**"), including electronic protected health information ("**EPHI**");

WHEREAS, the Parties wish to comply with Privacy Standards and Security Standards as amended by the HHS regulations promulgated on January 25, 2013, entitled the "Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act," as such may be revised or amended by HHS from time to time;

WHEREAS, in connection with Vendor's performance under its agreement(s) or other documented arrangements between Vendor and Covered Entity, whether in effect as of the Effective Date or which become effective at any time during the term of this Agreement (collectively "**Business Arrangements**"), Vendor may provide services for, or on behalf of, Covered Entity that require Vendor to use, disclose, receive, access, create, maintain and/or transmit health information that is protected by state and/or federal law; and

WHEREAS, Vendor and Covered Entity desire that Vendor obtain access to PHI and EPHI in accordance with the terms specified herein;

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement and the Business Arrangements, and other good and valuable consideration, the sufficiency and receipt of which are hereby severally acknowledged, the Parties agree as follows:

1. **Vendor Obligations.**

In accordance with this Agreement and the Business Arrangements, Vendor may use, disclose, access, create, maintain, transmit, and/or receive on behalf of Covered Entity health information that is protected under applicable state and/or federal law, including without limitation, PHI and EPHI. All capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the regulations promulgated by HHS in accordance with HIPAA and HITECH, including the Privacy Standards and Security Standards (collectively referred to hereinafter as the "**Confidentiality Requirements**"). All reference to PHI herein shall be construed to include EPHI. PHI shall mean only that PHI Vendor uses, discloses, accesses, creates, maintains, transmits and/or receives for or on behalf of Covered Entity pursuant to the Business Arrangements. The Parties hereby acknowledge that the definition of PHI includes "**Genetic Information**" as set forth at 45 C.F.R. §160.103. To the extent Vendor is to carry out an obligation of Covered Entity under the Confidentiality Requirements, Vendor shall comply with the provision(s) of the Confidentiality Requirements that would apply to Covered Entity (as applicable) in the performance of such obligations(s).

2. **Use of PHI.**

Except as otherwise required by law, Vendor shall use PHI in compliance with this Agreement and 45 C.F.R. §164.504(e). Vendor agrees not to use PHI in a manner that would violate the Confidentiality Requirements if the PHI were used by Covered Entity in the same manner. Furthermore, Vendor shall use PHI for the purpose of performing services for, or on behalf of, Covered Entity as such services are defined in the Business Arrangements. In addition, Vendor may use PHI (i) as necessary for the proper management and administration of Vendor or to carry out its legal responsibilities; provided that such uses are permitted under federal and applicable state law, and (ii) to provide data aggregation services relating to the health care operations of the Covered Entity as defined by 45 C.F.R. § 164.501. Covered Entity also authorizes Vendor to collect and store its data for aggregate reporting, but in no event shall Vendor disclose PHI unless permitted by law. Moreover, Vendor will not identify Covered Entity without consent. Covered Entity authorizes Vendor to de-identify PHI it receives from Covered Entity. All de-identification of PHI must be performed in accordance with the Confidentiality Requirements, specifically 45 C.F.R. §164.514(b).

3. **Disclosure of PHI.**

- 3.1 Subject to any limitations in this Agreement, Vendor may disclose PHI to any third party as necessary to perform its obligations under the Business Arrangements and as permitted or required by applicable law. Vendor agrees not to disclose PHI in a manner that would violate the Confidentiality Requirements if the PHI was disclosed by the Covered Entity in the same manner. Further, Vendor may disclose PHI for the proper management and administration of Vendor; provided that: (i) such disclosures are required by law; or (ii) Vendor: (a) obtains reasonable assurances from any third party to whom the PHI is disclosed that the PHI will be held confidential and used and disclosed only as required by law or for the purpose for which it was disclosed to third party, and (b) requires the third party to agree to immediately notify Vendor of any instances of which it is aware that PHI is being used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Confidentiality Requirements. Vendor shall report to Covered Entity any use or disclosure of PHI not permitted by this Agreement of which it becomes aware. Such report shall be made within five (5) business days of Vendor becoming aware of such use or disclosure.
- 3.2 If Vendor uses or contracts with any agent, including a subcontractor (collectively "**Subcontractors**") that uses, discloses, accesses, creates, receives, maintains or transmits PHI on behalf of Vendor, Vendor shall require all Subcontractors to agree in writing to the same restrictions and conditions that apply to Vendor under this Agreement. In addition to Vendor's obligations under Section 9, Vendor agrees to mitigate, to the extent practical and unless otherwise requested by the Covered Entity, any harmful effect that is known to Vendor and is the result of a use or disclosure of PHI by Vendor or any Subcontractor in violation of this Agreement. Additionally, Vendor shall ensure that all disclosures of PHI by Vendor and its Subcontractors comply with the principle of "**minimum necessary use and disclosure**," (i.e., in accordance with 45 C.F.R. §164.502(b), only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed).

4. **Individual Rights Regarding Designated Record Sets.**

If Vendor maintains a Designated Record Set on behalf of Covered Entity, Vendor shall: (i) provide access to and permit inspection and copying of PHI by Covered Entity under conditions and limitations required under 45 C.F.R. §164.524, as it may be amended from time to time; and (ii) amend PHI maintained by Vendor as required by Covered Entity. Vendor shall respond to any request from Covered Entity for access by an individual within ten (10) business days of such request and shall make any amendment requested by Covered Entity within twenty (20) business days of such request. Any information requested under this **Section 4** shall be provided in a form or format requested, if it is readily producible in such form or format. Vendor may charge a reasonable fee based upon Vendor's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies). Vendor shall notify Covered Entity within ten (10) business days of receipt of any request for access or amendment by an individual.

5. **Accounting of Disclosures.**

Vendor shall make available to Covered Entity within ten (10) business days of a request by Covered Entity the information required for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528 (or such shorter time as may be required by state or federal law). Such accounting must be provided without cost if it is the first accounting requested within any twelve (12) month period. For subsequent accountings within the same twelve (12) month period, Vendor may charge a reasonable fee based upon Vendor's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies) only after Vendor informs Covered Entity and Covered Entity informs the individual in advance of the fee, and the individual is afforded an opportunity to withdraw or modify the request. Such accounting obligations shall survive termination or expiration of this Agreement and with respect to any disclosure, whether on or before the termination of this Agreement, shall continue for a minimum of seven (7) years following the date of such disclosure.

6. **Withdrawal of Authorization.**

If the use or disclosure of PHI under this Agreement is based upon an individual's specific authorization regarding the use of his or her PHI, and: (i) the individual revokes such authorization in writing; (ii) the effective date of such authorization has expired; or (iii) the authorization is found to be defective in any manner that renders it invalid for whatever reason, then Vendor agrees, if it has received notice from Covered Entity of such revocation or invalidity, to cease the use and disclosure of any such individual's PHI except to the extent Vendor has relied on such use or disclosure, or where an exception under the Confidentiality Requirements expressly applies.

7. **Records and Audit.**

Vendor shall make available to HHS or its agents its internal practices, books, and records relating to the compliance of Vendor and Covered Entity with the Confidentiality Requirements, such internal practices, books and records to be provided in the time and manner designated by HHS or its agents.

8. **Implementation of Security Standards; Notice of Security Incidents.**

Vendor will comply with the Security Standards and, by way of example and not limitation, use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement. In accordance with the Security Standards, Vendor will implement administrative, physical, and technical safeguards that protect the confidentiality, integrity and availability of the PHI that it uses, discloses, accesses, creates, receives, maintains or transmits. To the extent feasible, Vendor will use commercially reasonable efforts to ensure

that the technology safeguards used by Vendor to secure PHI will render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI. Vendor will promptly report to Covered Entity any Security Incident of which it becomes aware; provided, however, that Covered Entity acknowledges and shall be deemed to have received notice from Vendor that there are routine occurrences of: (i) unsuccessful attempts to penetrate computer networks or services maintained by Vendor; and (ii) immaterial incidents such as "pinging" or "denial of services" attacks. At the request of Covered Entity, Vendor shall identify: the date of the Security Incident, the scope of the Security Incident, Vendor's response to the Security Incident, and to the extent permitted by law, the identification of the party responsible for causing the Security Incident, if known.

9. **Data Breach Notification and Mitigation.**

9.1 **HIPAA Data Breach Notification and Mitigation.** Vendor agrees to implement reasonable systems for the discovery and prompt reporting of any "breach" of "unsecured PHI" as those terms are defined by 45 C.F.R. §164.402 ("HIPAA Breach"). The Parties acknowledge and agree that 45 C.F.R. §§164.404 and 164.410, as describe below in this **Section 9.1**, govern the determination of the date of a HIPAA Breach. In the event of any conflict between this **Section 9.1** and the Confidentiality Requirements, the more stringent requirements shall govern. Following the discovery of a HIPAA Breach, Vendor will notify Covered Entity immediately and in no event later than five (5) business days after Vendor discovers such HIPAA Breach unless Vendor is prevented from doing so by 45 C.F.R. §164.412 concerning law enforcement investigations. For purposes of reporting a HIPAA Breach to Covered Entity, the discovery of a HIPAA Breach shall occur as of the first day on which such HIPAA Breach is known to Vendor or, by exercising reasonable diligence, would have been known to Vendor. Vendor will be considered to have had knowledge of a HIPAA Breach if the HIPAA Breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the HIPAA Breach) who is an employee, officer or other agent of Vendor. No later than ten (10) business days following a HIPAA Breach, Vendor shall provide Covered Entity with sufficient information to permit Covered Entity to comply with the HIPAA Breach notification requirements set forth at 45 C.F.R. §164.400 *et. seq.* This **Section 9.1** shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Vendor maintains PHI.

9.2 **Data Breach Notification and Mitigation Under Other Laws.** In addition to the requirements of **Section 9.1**, Vendor agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including, but not limited to, PHI and referred to hereinafter as "**Individually Identifiable Information**") that, if misused, disclosed, lost or stolen would trigger an obligation under one or more State data breach notification laws (each a "**State Breach**") to notify the individuals who are the subject of the information. Vendor agrees that in the event any Individually Identifiable Information is lost, stolen, used or disclosed in violation of one or more State data breach notification laws, Vendor shall promptly: (i) notify Covered Entity within five (5) business days of such misuse, disclosure, loss or theft; and (ii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach. This **Section 9.2** shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Vendor maintains PHI or Individually Identifiable Information.

10. **Obligations of Covered Entity.**

10.1 **Notification Requirement.** Covered Entity shall notify Vendor of:

- a. Any limitation(s) in Covered Entity's notice of privacy practices in accordance with 45 CFR 164.520 to the extent that such changes may affect Vendor's use or disclosure of PHI;
- b. Any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Vendor's use or disclosure of PHI; and
- c. Any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Vendor's use or disclosure of PHI.

10.2 **Permissible Requests.** Covered Entity agrees that it will not request Vendor to use or disclose PHI in any manner that would not be permissible under the Confidentiality Requirements if done by Covered Entity.

11. **Terms and Termination.**

11.1 **Termination.** This Agreement shall remain in effect until terminated in accordance with the terms of this **Section 11**; provided, however, that termination shall not affect the respective obligations or rights of the Parties arising under this Agreement prior to the effective date of termination, all of which shall continue in accordance with their terms.

11.2 **Termination with Cause.** Either Party may immediately terminate this Agreement if either of the following events have occurred and are continuing to occur:

- a. Vendor or Covered Entity fails to observe or perform any material covenant or obligation contained in this Agreement for ten (10) business days after written notice of such failure has been given; or

- b. Vendor or Covered Entity violates any provision of the Confidentiality Requirement or applicable federal or state privacy law relating to its obligations under this Agreement.

11.3 May Terminate Business Arrangements in Event of for Cause Termination. Termination of this Agreement for either of the two reasons set forth in **Section 11.2** above shall be cause for immediate termination of any Business Arrangement pursuant to which Vendor uses, discloses, accesses, receives, creates, or transmits PHI for or on behalf of Covered Entity.

11.4 Termination Upon Conclusion of Business Arrangements. Upon the expiration or termination of all Business Arrangements, either Covered Entity or Vendor may terminate this Agreement by providing written notice to the other Party.

11.5 Return of PHI Upon Termination. Upon termination of this Agreement for any reason, Vendor agrees either to return all PHI or to destroy all PHI received from Covered Entity that is in the possession or control of Vendor or its Subcontractors. In the case of PHI for which it is not feasible to return or destroy, Vendor shall extend the protection of this Agreement to such PHI and limit further uses and disclosure of such PHI. Vendor shall comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment of such PHI. This **Section 11.5** shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Vendor maintains PHI.

12. **No Warranty.**

PHI IS PROVIDED SOLELY ON AN "AS IS" BASIS. THE PARTIES DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

13. **Ineligible Persons.**

Vendor represents and warrants to Covered Entity that its directors, officers, and key employees: (i) are not currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C. § 1320a-7b(f) of any state healthcare program (collectively, the "**Healthcare Programs**"); (ii) have not been convicted of a criminal offense related to the provision of healthcare items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Healthcare Programs; and (iii) are not under investigation or otherwise aware of any circumstances which may result in Vendor being excluded from participation in the Healthcare Programs (collectively, the "**Warranty of Non-exclusion**"). Vendor representations and warranties underlying the Warranty of Non-exclusion shall be ongoing during the term, and Vendor shall immediately notify Covered Entity of any change in the status of the representations and warranties set forth in this **Section 13**. Any breach of this **Section 13** shall give Covered Entity the right to terminate this Agreement immediately.

14. **Equitable Relief.**

The Parties understand and acknowledge that any disclosure or misappropriation of any PHI in violation of this Agreement will cause irreparable harm, the amount of which may be difficult to ascertain, and therefore agree that either Party shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief deemed appropriate. Such right shall be in addition to the remedies otherwise available at law or in equity.

15. **Entire Agreement.**

This Agreement constitutes the complete agreement between Vendor and Covered Entity relating to the matters specified in this Agreement and supersedes all prior representations or agreements, whether oral or written with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangements or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Business Arrangements are more strict with respect to PHI and comply with the Confidentiality Requirements, or the Parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party to this Agreement; *provided, however* that upon the enactment of any law, regulation, court decision or relevant government publication and/or interpretive guidance or policy that a Party believes in good faith will adversely impact the use or disclosure of PHI under this Agreement, that Party may amend the Agreement to comply with such law, regulation, court decision or government publication, guidance or policy by delivering a written amendment to the other Party which shall be effective thirty (30) calendar days after receipt. No obligation on either Party to enter into any transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon the Parties, their affiliates and respective successors and assigns.