

MASTER SUBSCRIPTION AND LICENSE AGREEMENT

This Master Subscription and License Agreement (this “**Agreement**”) is entered into as of _____ (“**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, including its controlled subsidiaries, (collectively, “**ESO**”) and the City of Hollywood, a municipal corporation of the State of Florida “**User**”). 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 User certain technology products and/or services. 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 follows.

GENERAL TERMS AND CONDITIONS

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

“**Add-On Software**” means any complementary software components or reporting service(s) that ESO makes available to User through its Licensed Software, Interoperability Software or SaaS.

“**Addendum**” 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, (b) a Statement of Work, (c) Sales Order, or (d) another writing the parties intend to be incorporated by reference into this Agreement.

“**Anonymized Data**” means User Data from which all personally identifiable information has been removed, as well as the names and addresses of User and any of its Users (and which, as a consequence, is neither PHI nor identifiable to or by User).

“**Deliverable**” means software, report, or other work product created pursuant to a Statement of Work.

“**Documentation**” means User guides, operating manuals, and specifications regarding the Software.

“**End User**” means any individual who uses the Software on User’s behalf or through User’s account or passwords, whether authorized or not.

“**Feedback**” refers to any suggestion or idea for improving or otherwise modifying ESO’s products or services.

“**Incident**” refers to a locked and uploaded record within the system on a per-encounter basis, regardless of the number of patients involved in said individual encounter.

“**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.

“**Interoperability Software**” means SaaS that allows User to exchange healthcare data with others. For the avoidance of doubt, Interoperability Software does not include Add-on Software or Licensed Software.

“**Licensed Software**” means the executable, object code version of software that ESO provides to User for its use and installation on User’s own equipment. For the avoidance of doubt, Licensed Software does not include Add-on Software, Interoperability Software or SaaS.

“**New Version**” means any new version of Licensed Software that ESO may from time to time introduce and market generally as a distinct licensed product, as may be indicated by Licensor’s designation of a new version number, brand or product.

“**Outage**” means User is unable to access SaaS, or such access is materially delayed, impaired or disrupted, in each case as caused or controlled by ESO.

“**Professional Services**” means professional services provided by ESO under a Statement of Work.

“**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.

“**Reporting Services**” means, collectively, the different tools or features in the Software allowing User to generate compilations of data, including but not limited to ad-hoc reports, analytics, benchmarking or any other reporting tool provided through the Software.

“**SaaS**” means software-as-a-service that ESO hosts (directly or indirectly) for User’s use. For the avoidance of doubt, SaaS does not include Licensed Software, but does include Add-on Software and Interoperability Software.

“**Scheduled Downtime**” means periods when ESO intentionally interrupts the SaaS for the performance of system maintenance or to otherwise correct service errors.

“**Software**” means any ESO computer program, programming or modules specified in any Software Schedule or SOW. For the avoidance of doubt, Add-on Software, SaaS, Interoperability Software, and Licensed Software are collectively referred to as Software.

“**Software Schedule**” refers to an Addendum under which User has ordered either Add-on Software, Licensed Software, Interoperability Software or SaaS.

“**Statement of Work**” or “**SOW**” refers to an Addendum in which User has ordered Professional Services or a Deliverable from ESO.

“**Support Services**” means those services described in Exhibit B.

“**Third-Party Data**” means data not owned by ESO but which is (or access to which is) provided by ESO under a Software Schedule.

“**Third-Party Service**” means a service not provided by ESO but which is (or access to which is) offered by ESO in connection with its Software under a Software Schedule or Addendum.

“**Third-Party Software**” means software not owned by ESO but which is (or access to which is) provided by ESO under a Software Schedule or Addendum.

“**Use Restrictions**” means the restrictions imposed on User’s use of Software as described in Section 3.3.

“**User Data**” means information, data and other content in electronic form that is submitted, posted, or otherwise transmitted by or on behalf of User through the Software.

2. **SOFTWARE ORDERS.** During the Term, User may order Software from ESO by signing an appropriate Software Schedule. User’s license to Licensed Software and its subscription to SaaS are set forth below. Each such Software Schedule is incorporated herein by reference.

3. LICENSE/SUBSCRIPTION TO SOFTWARE

- 3.1. **Grant of Subscription: SaaS.** For SaaS, during the Term User may access and use the SaaS and Reporting Services, in such quantities as are set forth on the applicable Software Schedule, subject to User’s compliance with the Use Restrictions and other limitations contained in this Agreement.
- 3.2. **Grant of License: Licensed Software.** For Licensed Software, during the Term ESO hereby grants User a limited, non-exclusive, non-transferable, non-assignable, non-sublicensable, 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 User’s internal business purposes, in each case subject to User’s compliance with the Use Restrictions and other limitations and obligations contained in this Agreement.
- 3.3. **Use Restrictions.** Except as provided in this Agreement or as otherwise authorized by ESO, User has no right to, and shall not: (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 User; (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 (including any affiliate not specifically listed in the applicable Software Schedule).

- 3.4. **Ownership.** 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 User any intellectual property rights in the Software or any of its components, except to the limited extent that this Agreement specifically sets forth User's rights to access, use, or copy the Software during the Term. User acknowledges that the Software and its components are protected by copyright and other laws.
- 3.5. **Third-Party Software and Services.** ESO neither accepts liability for, nor warrants the functionality, utility, availability, reliability or accuracy of, Third-Party Software or Third-Party Services. The Third-Party Software "EMS1 Academy" and/or "FireRescue1 Academy" and/or "EMS1 & FireRescue1 Academy – Implementation and Configuration" and/or "Learning Management System" and/or "EVALS Implementation" (collectively, "**Education**") is offered by ESO in collaboration with Lexipol, f/k/a The Praetorian Group. If User subscribes to Education, User acknowledges and agrees to the terms and conditions of the Praetorian license agreement, located at <http://www.praetoriandigital.com/LMS-Master-Service-Agreement>, which shall supersede this Agreement as it applies to User's use of Education and any User Data stored therein.
- 3.6. **Third-Party Data.** If User (as indicated on an Addendum) elects to license Third-Party Data (e.g., fire codes), then subject to the terms hereof, ESO hereby grants User a non-exclusive, non-sublicensable, and non-transferable license during the Term to use such Third-Party Data via the Software solely for User's internal purposes. User will not (i) allow greater access than that set forth in the applicable Software Schedule, (ii) disclose, release, distribute, or deliver Third-Party Data, or any portion thereof, to any third party (iii) copy, modify, or create derivative works of Third-Party Data, (iv) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available Third-Party Data, (v) attempt to output in any form more than 10% of the Third-Party Data or otherwise circumvent the usage limitations included in the Software, (vi) remove any proprietary notices included within Third-Party Data or Software, or (vii) use Third-Party Data in any manner or for any purpose that infringes or otherwise violates any proprietary right of a person, or that violates applicable law. ESO does not warrant the functionality, reliability, accuracy, completeness or utility of, Third-Party Data, or accept any liability therefor. Additional terms and limitations applicable to Third-Party Data may be provided on the applicable Addendum.
- 3.7. **New Versions & Sunset.** If ESO releases a New Version of Licensed Software, User may elect to receive such New Version, subject to a license fee of 75% of the standard price for such new version. All New Versions provided under this Agreement will constitute Licensed Software and be subject to the terms and conditions of this Agreement. ESO may discontinue Support Services for Licensed Software upon 12 months' notice to User.

4. HOSTING, SLA & SUPPORT SERVICES

- 4.1. **Hosting & Management.** User shall be solely responsible for hosting and managing any Licensed Software. ESO shall be responsible for hosting and managing any SaaS.
- 4.2. **Service Level Agreement.** If an Outage, excluding Scheduled Downtime (as defined below), results in the service level uptime falling below 99% for three months in any rolling 12-month period (the "**Uptime Commitment**"), then User may immediately terminate this Agreement, in which case ESO will refund any prepaid, unearned Fees to User. This is User's sole remedy for ESO's breach of the Uptime Commitment.
- 4.3. **Scheduled Downtime.** ESO will provide reasonable notice to the User (Software Administrator Contact or otherwise) of Scheduled Downtime (usually at least 72 hours in advance), and will plan Scheduled Downtime to occur during non-peak hours (midnight to 6 a.m. Central Time). Scheduled Downtime shall never constitute a failure of performance or Outage by ESO.
- 4.4. **Support and Updates.** During the Term, ESO shall provide to User the Support Services, in accordance with Exhibit B, which is incorporated herein by reference.

5. FEES

- 5.1. ESO acknowledges and agrees that said Software is being funded by R1 RCM, Inc. ("**Third-Party Payer**") based upon its Emergency Medical Transport Billing and Consulting Services with User and Third-Party Payer is solely liable to ESO for payment of any and all Fees. In the event Third-Party Payer does not pay the Fees ("**Default Event**"), ESO may terminate this Agreement with 30 days prior written notice to User. In the event User desires to continue using the Software and/or Services, the parties shall negotiate in good faith a new agreement materially similar to this Agreement which designates a new payer (whether User or a third-party) who shall be responsible for the payment of the Fees at their undiscounted, list price beginning upon the date the Third-Party Payer ceased funding payment of the Fees.
- 5.2. **Uplift on Renewal.** Fees for Software, which recur annually, shall increase by 3% each year this Agreement is in effect.

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 one year); provided that the Term shall be automatically extended to match the end of the last subscription period or license period of any Software provided hereunder. Thereafter, the Term will renew for successive one-year periods unless written notice is provided at least 60 days prior to the applicable renewal date.
- 6.2. **Termination for Cause.** Either party may terminate this Agreement or any individual Software Schedule for the other party's uncured material breach by providing written notice. The breaching party shall have 30 days from receipt to cure such breach to the reasonable satisfaction of the non-breaching party.
- 6.3. **Effect of Termination.**
- 6.3.1. If User terminates this Agreement or any Software Schedule as a result of ESO's material breach, then to the extent that User has prepaid any Fees, ESO shall refund to User any prepaid Fees on a pro-rata basis to the extent such Fees are attributable to the period after the latter to occur of the (i) termination date or (ii) the date on which User actually ceases use of the Software.
- 6.3.2. Upon termination of this Agreement or any Software Schedule, User 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.
- 6.3.3. Termination of this Agreement is without prejudice to any other right or remedy and shall not release a party from any liability.
- 6.4. **Delivery of Data.** ESO acknowledges and agrees that as User is a governmental entity, the parties are subject to Chapter 119, Florida Statutes, entitled "Public Records Act", including but not limited to Section 119.0701, Florida Statutes. If ESO has questions regarding the application of Chapter 119, Florida Statutes, to its duty to provide public records relating to this Agreement, ESO may contact USER's custodian of public records at (954) _____, _____@hollywoodfl.org, Department of Fire Rescue & Beach Safety, _____ Stirling Road, Hollywood, FL. Therefore, ESO will provide USER with its USER Data in accordance with the requirements of Chapter 119, Florida Statutes, no more than 60 days after the expiration or termination of this Agreement. "

7. REPRESENTATIONS AND WARRANTIES

- 7.1. **Material Performance of Software.** ESO represents and warrants that the Software will perform in material accordance with any Documentation provided by ESO.
- 7.2. **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.
- 7.3. **User Cooperation.** User agrees to use current operating systems and reasonably and timely cooperate with ESO, including providing ESO reasonable access to its equipment, software and data.

8. **DISCLAIMER OF WARRANTIES.** EXCEPT AS OTHERWISE PROVIDED IN SECTION 7, ESO DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING 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, ESO DOES NOT REPRESENT OR WARRANT THAT USER DATA WILL REMAIN PRIVATE OR SECURE, OR THAT THE SOFTWARE (X) WILL PERFORM WITHOUT INTERRUPTION OR ERROR, OR (Y) IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7, USER 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 business days; (c) the Software and Documentation, whether or not designated confidential; (d) ESO's security controls, policies, procedures, audits, or other information concerning ESO's internal security posture; (e) any other nonpublic, sensitive information reasonably treated as trade secret or otherwise confidential; and (f) User Data which does not comprise PHI. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in the other party's possession at the time of disclosure free of duty of non-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 the receiving party's improper action or inaction; (iv) is approved for release in writing by the disclosing party; or (v) PHI (which shall be governed by the Business Associate Agreement rather than this Section). If this definition conflicts with the definition set forth in Chapter 119, Florida Statutes, the definition in Chapter 119, Florida Statutes will prevail.

9.2. **Nondisclosure.** To the extent permitted by law, each party shall use Confidential Information of the other party solely to fulfill the terms of this Agreement (the **"Purpose"**). Each party shall (a) ensure that its employees or contractors are bound by confidentiality obligations no less restrictive than those contained herein, and (b) 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. **Termination & Return.** With respect to each item of Confidential Information, the obligations of nondisclosure will terminate three 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 the destruction thereof, to the extent permitted by law.

9.4. **Retention of Rights.** This Agreement does not transfer ownership of Confidential Information or grant a license thereto.

9.5. **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, User 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 (and for a period of at least three 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 (a/k/a 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 coverage") covering losses arising from a disclosure of confidential information (including PHI) with a combined aggregate amount of \$1 million.

11. INDEMNIFICATION

11.1. **IP Infringement.** Subject to the limitations in Section 12, ESO shall defend and indemnify User from any damages, costs, liabilities, expenses (including reasonable 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 User makes an Indemnified Claim under this Section or if ESO determines that an Indemnified Claim may occur, ESO shall at its option: (a) obtain a right for User 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 practicable, either party may, at its option, terminate the relevant Software Schedule, in which case ESO will refund any pre-paid Fees on a pro-rata basis for such Software Schedule. Notwithstanding the foregoing, ESO shall have no obligation hereunder for any claim resulting or arising from (x) User'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 User (and/or anyone acting on User's behalf) of the Software in connection with any other product or service (the combination or joint use of which causes the alleged infringement). This Section 11 states ESO's sole obligation and liability, and User'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"), User must give prompt written notice of such Claim to ESO, accompanied by copies of any written documentation regarding the Claim received by the User. ESO shall compromise or defend, at its own expense and with its own counsel, any such Claim. User 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 ESO will have the right to control such settlement or defense. ESO will not enter into any settlement that imposes any liability or obligation on User without the User'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 ESO's expense.

12. LIMITATION OF LIABILITY

12.1. **LIMITATION OF DAMAGES.** NEITHER ESO NOR USER SHALL BE LIABLE TO THE OTHER 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 RELATING TO THIS AGREEMENT.

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 (OR ON BEHALF OF) USER WITHIN THE PRECEDING 12-MONTH PERIOD UNDER THE APPLICABLE SOFTWARE SCHEDULE OR SOW GIVING RISE TO THE CLAIM.

12.3. **EXCEPTIONS TO LIMITATION OF LIABILITY.** NOTWITHSTANDING SECTION 12.2, (A) ESO'S LIABILITY FOR CLAIMS INVOLVING ITS INDEMNIFICATION OBLIGATIONS UNDER SECTION 11 SHALL BE LIMITED TO \$500,000, AND (B) ESO'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 ESO'S WILLFUL MISCONDUCT OR CRIMINAL CONDUCT; AND (II) CLAIMS ARISING FROM A BREACH OF CONFIDENTIALITY OBLIGATIONS, INCLUDING A BREACH OF OBLIGATIONS REGARDING 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 USER, 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. USER DATA & PRIVACY

- 13.1. Ownership of Data. As between ESO and User, all User Data shall be owned by User.
- 13.2. Use of User Data. Unless it receives User's prior written consent, ESO shall not: (a) access, process, or otherwise use User Data; and (b) intentionally grant any third-party access to User 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 User Data to fulfill its obligations under this Agreement or as required by applicable law or legal or governmental authority. ESO shall give User prompt notice of any such legal or governmental demand and reasonably cooperate with User in any effort to seek a protective order or otherwise to contest such required disclosure, at User's expense.
- 13.3. Anonymized Data. USER ACKNOWLEDGES AND AGREES THAT, NOTWITHSTANDING ANY OTHER PROVISION HEREIN, ESO MAY USE ANONYMIZED DATA FOR INTERNAL AND EXTERNAL PURPOSES (INCLUDING BENCHMARKING AND RESEARCH), PROVIDED THAT ESO WILL NOT SELL ANONYMIZED DATA TO THIRD PARTIES FOR COMMERCIAL USE. Without limiting the foregoing, ESO will own all right, title and interest in all Intellectual Property of any aggregated and de-identified reports, summaries, compilations, analysis, statistics or other information derived therefrom.
- 13.4. Risk of Exposure. User acknowledges and agrees that hosting data online involves risks of unauthorized disclosure and that, in accessing and using the SaaS, User assumes such risks. User has sole responsibility for obtaining, maintaining, and securing its network connections. ESO makes no representations to User 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 User 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 User. 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 User 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 User (if applicable). User hereby explicitly acknowledges and agrees that nothing in this Agreement or a separate SOW gives the User 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 use of the Software and 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 User 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 User (and its respective End Users) to enter, document, and disclose User Data, and as such, ESO gives no representations or guarantees about the accuracy or completeness of User Data (including PHI) entered, uploaded or disclosed through the Software.
- 16.2. User 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 User.
- 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 to a person designated in writing by the receiving party, 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 User 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 User's internal purposes only, and that any terms, provisions, and conditions contained therein shall in no way modify this Agreement.
- 17.4. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to the extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
- 17.5. Subcontracting. Except for training and implementation services related to the Software, neither party may subcontract or delegate its obligations to each other 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.

- 17.6. Modifications and Amendments. This Agreement may not be amended except through a written agreement signed by authorized representatives of each party, provided that the User agrees that ESO may rely on informal writings (including emails) of User's authorized representatives to (i) terminate Software products and services and (ii) approve or ratify rate or tier increases for Software products and services then in use by User.
- 17.7. Force Majeure. No delay, failure, or default 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 30 days, the other party may immediately terminate the applicable Software Schedule.
- 17.8. Marketing. If requested by ESO, User agrees to reasonably cooperate with ESO's preparation and issuance of a public announcement regarding the relationship of the parties.
- 17.9. Waiver & Breach. Neither party will be deemed to have waived any 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 hereof.
- 17.10. Survival of Terms. Unless otherwise stated, all of ESO's and User'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 claim dispute or controversy hereunder (a "**Dispute**") will be governed by (i) the laws of the State of Texas, or (ii) if User is a city, county, municipality or other governmental entity, the law of state where User is located, in each case foregoing without regard to its conflicts of law. The UN Convention for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply. In any Dispute, each party will bear its own attorneys' fees and costs and expressly waives any statutory right to attorneys' fees.
- 17.13. 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.
- 17.14. No Class Actions. NEITHER PARTY SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER ESO CUSTOMERS, OR PURSUE ANY CLAIM AS A REPRESENTATIVE OR CLASS ACTION OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.
- 17.15. Limitation Period. Neither party shall be liable for any claim brought more than two years after the cause of action for such claim first arose.
- 17.16. Dispute Resolution. User 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 to the extent permitted by law. If the parties are unable to reach a resolution within 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.
- 17.17. Technology Export. User 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, User 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).
- 17.18. 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 (4) 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.
- 17.19. 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.
- 17.20. 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 day and year first above written.

CITY OF HOLLYWOOD, a municipal corporation of
the State of Florida

ATTEST:

Patricia A. Cerny, MMC
CITY CLERK

By: _____
Josh Levy, Mayor
Approved By: _____
Cintya Ramos, Director of Financial
Services

APPROVED AS TO FORM & LEGAL
SUFFICIENCY for the use and reliance
of the City of Hollywood, Florida, only.

Douglas R. Gonzales, City Attorney

ESO SOLUTIONS, INC.

By: _____
Signature

Name: _____
Print Name

Title: _____
Print Title

EXHIBIT A-1

SAAS SOFTWARE SCHEDULE

(Applications - ESO EHR, ESO Fire, ESO PM, FIREHOUSE Cloud, IFC Codes, EMS1 Academy, FireRescue1 Academy, Staff Scheduling, Assets, Inventory, Checklist)

1. The SaaS subscription term shall begin 15 calendar days after the Effective Date ("SaaS Subscription Start Date"). User shall be deemed to have accepted the SaaS on the SaaS Subscription Start Date. The parties will make reasonable efforts to ensure that User is able to use the SaaS as contemplated as quickly as possible, but 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.eso.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.eso.com/software/personnel-management>).
 - 2.3. ESO Fire is a SaaS software application for NFIRS reporting (<http://www.eso.com/software/fire>).
3. The following Third-Party Data and/or Software may be ordered under this Exhibit: 2018 International Fire Code, 2015 International Fire Code, 2012 International Fire Code, Education (see section 3.5).
4. Third-Party Payer is responsible for the following Fees:

Fire					
Product	Volume	Price	Discount	Total	Fee Type
Fire - Training	1 Days	\$995.00	(\$0.00)	\$995.00	One-time
ESO Fire Incidents	6 Stations	\$6,170.00	(\$1,449.95)	\$4,720.05	Recurring
Telestaff Integration	25000 Incidents	\$2,595.00	(\$1,339.28)	\$1,255.72	Recurring

EHR					
Product	Volume	Price	Discount	Total	Fee Type
ESO EHR Suite	25000 Incidents	\$34,190.00	(\$8,034.65)	\$26,155.35	Recurring
EHR CAD Integration	25000 Incidents	\$3,995.00	(\$938.82)	\$3,056.18	Recurring
EHR Cardiac Monitor Integration	25000 Incidents	\$1,895.00	(\$445.32)	\$1,449.68	Recurring
EHR Billing Interface	25000 Incidents	\$995.00	(\$995.00)	\$0.00	Recurring
EHR Training	2 Days	\$1,990.00	(\$0.00)	\$1,990.00	One-time
EHR Training Travel Costs	1 Travel Cost	\$1,500.00	(\$0.00)	\$1,500.00	One-time
EHR - Handtevy Integration	25000 Incidents	\$995.00	(\$995.00)	\$0.00	Recurring
EHR CARES Extract	25000 Incidents	\$995.00	(\$995.00)	\$0.00	Recurring

Total Recurring	\$	51,830.00
Total One-Time	\$	4,485.00
Discounts	\$	(15,193.02)
TOTAL	\$	41,121.98

5. All the Fees above will be invoiced by ESO to the Third-Party Payer.

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 User Enhancement request.
- 1.3. "Status Update" means if the initial Workaround or Fix cannot resolve the Error, notification of the User regarding the progress of the Workaround or Fix.
- 1.4. "Online Support" means information available through ESO's website (www.eso.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 User, which User'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 User to avoid an Error without substantially impairing User's use of the Software.

2. SUPPORT SERVICES.

- 2.1. User will provide at least one administrative employee (the "Administrator" or "Administrators") who will handle all requests for first-level support from User's employees with respect to the Software. Such support is intended to be the "front line" for support and information about the Software to Users. ESO will provide training, documentation, and materials to the Administrator to enable the Administrator to provide technical support to 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 User, 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 User'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. User will receive a call back from a Support Representative after-hours for a Severity 1 Error.
3. **ERROR PRIORITY LEVELS.** User will report all Errors to ESO via e-mail (support@eso.com) or by telephone (866-766-9471, option #3). ESO shall exercise commercially reasonable efforts to correct any Error reported by User 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 User 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 48 hours if unresolved; and (iv) provide User 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 User 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 User is not due to an Error in the Software, ESO will so notify User. At that time, User may request ESO to proceed with a root cause analysis at User's expense as set forth herein or in a separate SOW. If ESO agrees to perform the investigation on behalf of User, 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. However, prior to ESO performing the investigation, ESO shall advise USER in writing of the then current and standard consulting rates and USER will prior written notification to ESO as to whether to proceed. For the avoidance of doubt, Consulting Services will include customized report writing by ESO on behalf of User.
5. **EXCLUSIONS.**
 - 5.1. ESO shall have no obligation to perform Error Corrections or otherwise provide support for: (i) User's repairs, maintenance or modifications to the Software (if permitted); (ii) User'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) User'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 User's hardware or software systems that may be necessary to use the Software due to a Workaround or Fix.
 - 5.3. ESO is not required to perform any Error Correction unless ESO can replicate such Error on its own software and hardware or through remote access to User's software and hardware.
 - 5.4. User 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 User of such updates. User 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 User 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

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

Pursuant to the Master Subscription and License Agreement (the "Agreement") into which this HIPAA Business Associate Addendum (this "Addendum") has been incorporated, 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.

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 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 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 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 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 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 User 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. 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:
 - 21.1. 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 User Data once it is sent to or from Covered Entity outside ESO's Software over the public Internet; and
 - 21.2. Implement privacy and security safeguards in the systems, applications, and software Covered Entity controls, configures and connects to ESO's Software.
22. Third Party Rights. The terms of this Addendum do not grant any rights to any parties other than Business Associate and the Covered Entity.
23. Signatures. The signatures to the Agreement (or the document evidencing the parties' adoption thereof) indicate agreement hereto and shall be deemed signatures hereof, whether manual, electronic or facsimile.