

AGREEMENT BETWEEN COUNTY OF MONTEREY AND ESO SOLUTIONS, INC.

This **Agreement** is made this **31st day of March, 2017** (the "Effective Date") by and between the County of Monterey, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and ESO Solutions, Inc., hereinafter referred to as "CONTRACTOR.", a Texas corporation with offices at 9020 North Capital of Texas Highway, Suite II-300.

RECITALS

WHEREAS, COUNTY has invited proposals through the Request for Proposals (**RFP #10588**) for the provision of a unified Electronic Patient Care Reporting (ePCR) solution for all county first responder, transport, hospitals, and communication agencies in accordance with the specifications set forth in this AGREEMENT;

WHEREAS, CONTRACTOR has submitted a responsive and responsible proposal to perform the implementation, software subscription, technical support/maintenance, and technical consulting services;

WHEREAS, CONTRACTOR has the expertise and capabilities necessary to provide the services requested; and

NOW THEREFORE, COUNTY and CONTRACTOR, for the consideration hereinafter named, agree as follows:

1.0 PERFORMANCE OF THE AGREEMENT

- 1.1 After consideration and evaluation of CONTRACTOR'S proposal, COUNTY hereby engages CONTRACTOR to provide the services set forth in RFP # 10588 and in this AGREEMENT on the terms and conditions contained herein and in RFP # 10588. The intent of this AGREEMENT is to summarize the contractual obligations of the parties. The component parts of this AGREEMENT include the following:
 - 1.1.1 AGREEMENT
 - 1.1.2 EXHIBIT A – SPECIFICATIONS AND PROJECT IMPLEMENTATION PLAN
 - 1.1.3 EXHIBIT B - ePCR SUBSCRIPTION AGREEMENT
 - 1.1.5 EXHIBIT C – ePCR SUPPORT SERVICES AND SERVICE LEVELS
 - 1.1.6 EXHIBIT D - HOSPITAL DATA EXCHANGE SUBSCRIPTION TERMS
 - 1.1.7 EXHIBIT E – HOSPITAL DATA EXCHANGE SUPPORT SERVICE LEVELS
 - 1.1.6 EXHIBIT F - DATA SECURITY & COMPLIANCE
 - 1.1.7 EXHIBIT G - HARDWARE SPECIFICATIONS
 - 1.1.8 EXHIBIT H – SCHEDULE OF RATES

1.1.9 EXHIBIT I – CONFIDENTIALITY OF PATIENT INFORMATION AND RECORDS

1.1.10 EXHIBIT J – BUSINESS ASSOCIATES AGREEMENT

- 1.4 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this AGREEMENT that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

2.0 DEFINITIONS

As used in this Agreement, the following definitions apply to terms:

- 2.1 "Applicable Law" means, in the case of software compliance, Federal or State of California law, rules or regulations that relate to the functionality of the Software. In all other cases, Applicable Law means Federal, State of California or local laws, rules and regulations that apply to the conduct of CONTRACTOR's general business operations.
- 2.2 "Encumbrance" means the process by which amounts payable under this Agreement are posted to the COUNTY's financial records for the payment then due under this AGREEMENT, reducing the related appropriations balance.
- 2.3 "Charges" means the amounts to be paid by COUNTY for the right to use the Licensed Programs, for services provided to COUNTY and for hardware or other Third Party Products acquired by COUNTY under the terms of this AGREEMENT. The Charges and Payment Terms are described in Exhibit F - Pricing Schedule.
- 2.4 "Hardware Specifications" means the computer or device hardware required to access and operate the Licensed Programs. A description of the recommended Hardware Configuration is set forth in Exhibit C attached hereto.
- 2.5 "Licensed Programs" means the ESO Programs remotely accessed by participating agencies and COUNTY.
- 2.6 "Problem or Defect" means any failure of the Licensed Programs to operate in substantial conformance with the Hardware Specifications.

3.0 SOFTWARE SUBSCRIPTION

- 3.1 CONTRACTOR hereby grants COUNTY a non-exclusive, royalty-free, non-transferable subscription to ESO Solutions through CONTRACTOR hosted environment for COUNTY, County of Monterey first responders, transport, hospitals, communication, and other agencies within the County of Monterey internal business purposes;
- 3.2 Except as expressly stated in this AGREEMENT, no other rights, express, implied or otherwise are granted to COUNTY.
- 3.3 This AGREEMENT does not convey any rights of ownership in or title to the Software associated with the Services. All rights, title and interest in the Software and any copies or

derivative works thereof will remain the property of CONTRACTOR. COUNTY 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 COUNTY 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. COUNTY will keep the Software free and clear of all claims, liens, and encumbrances.

- 3.4 Upon COUNTY's request, CONTRACTOR agrees to provide COUNTY with verification as to the number of users and log in information to enable COUNTY to perform security and compliance audits.

4.0 COMPLIANCE WITH APPLICABLE LAW & TERMS OF GRANT

- 4.1 Compliance with Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this AGREEMENT.
- 4.2 Compliance with Terms of State and/or Federal Grants. If this AGREEMENT becomes funded with monies received the COUNTY pursuant to contract(s) with the state and/or federal government in which the COUNTY is the grantee, the parties shall immediately meet and confer regarding amending this AGREEMENT to ensure CONTRACTOR's compliance with all provisions of said contract(s), to the extent applicable to CONTRACTOR as a sub-grantee under said contract(s), and said provisions shall be deemed a part of this AGREEMENT as if fully set forth herein. Should the parties fail to reach an agreement on amending the contract, either party may terminate the contract upon thirty (30) days written notice. Upon request, COUNTY will deliver a copy of said contract(s) to CONTRACTOR at no cost to CONTRACTOR.

5.0 HARDWARE

CONTRACTOR will be responsible for all hardware necessary to host the database, application, and provide remote access to the ESO Suite to County of Monterey designated first responder, transport agencies, and hospitals. CONTRACTOR will not be responsible for end user hardware.

6.0 SCOPE OF SERVICE

The Summary of Scope of Services is as follows:

- 6.1 Software subscription for unlimited users and mobile devices for access to ESO Solutions provided to each subscription subscriber;
- 6.2 Provide software maintenance and technical support services;
- 6.3 Provide recurring services and support associated with a CONTRACTOR-hosted solution, which entails the management of the hardware, software, and database including updates, under CONTRACTOR's control for access by COUNTY designated agencies;

- 6.4 Provide technical consulting services to include implementation of CONTRACTOR-hosted electronic patient care records system (ePCR), on-site consultation, configuration, develop interfaces with existing hospital systems to enable data access as requested and approved by COUNTY.
- 6.5 Maintenance/support of the existing interfaces.
- 6.6 Provide a daily data extract of the database to County via secure file transfer in XML or .csv format.
- 6.7 Enter into separate and individual ESO Solution and Hospital Data Exchange Subscription Agreements with the participating agencies defined by COUNTY.
- 6.8 The details of Service are defined pursuant to the following sections of this AGREEMENT:
- 6.8.1 EXHIBIT A: Specifications and Project Implementation Plan - Documentation provisions that detail the implementation plan and COUNTY entitlement as part of the implementation services. This will include the automated Secure File Transfer Protocol (sFTP) transfer of full data extraction in XML or .csv format to COUNTY on daily basis.
 - 6.8.2 EXHIBIT B: ePCR SUBSCRIPTION AGREEMENT – defines the terms and conditions of the ESO Solution subscription under CONTRACTOR’s control.
 - 6.8.3 EXHIBIT C: ePCR SUPPORT SERVICES AND SERVICE LEVELS – defines the recurring technical support and maintenance services provided by CONTRACTOR during the term of this AGREEMENT.
 - 6.8.4 EXHIBIT D: HOSPITAL DATA EXCHANGE PARTICIPATION AGREEMENT – defines the terms and conditions of the Hospital Data Exchange (HDE) subscription developed by CONTRACTOR.
 - 6.8.5 EXHIBIT E: HOSPITAL DATA EXCHANGE SUPPORT SERVICE LEVELS - defines the support and role of CONTRACTOR for data exchange and interfaces with hospital data systems.
 - 6.8.6 EXHIBIT F: DATA SECURITY & COMPLIANCE – defines the hosted environment architecture, disaster recovery, and HIPAA Compliance.
 - 6.8.7 EXHIBIT G: HARDWARE SPECIFICATIONS – defines the minimum hardware specifications, ancillary interface requirements, and software compatibility.
 - 6.8.8 EXHIBIT H: SCHEDULE OF RATES.
 - 6.8.9 EXHIBIT I: CONFIDENTIALITY OF PATIENT INFORMATION AND RECORDS

7.0 TERM OF AGREEMENT

- 7.1 The term of the AGREEMENT shall be from March 31, 2017 through March 30, 2020. COUNTY is not required to state a reason if it elects to not renew.

- 7.2 If COUNTY elects to renew the AGREEMENT, CONTRACTOR AND COUNTY must commence negotiations for rate changes a minimum of one hundred and eighty days (180) prior to the expiration of the AGREEMENT.

8.0 COMPENSATION AND PAYMENTS

- 8.1 In consideration of the services to be provided by CONTRACTOR described in this AGREEMENT, the maximum obligation of the COUNTY⁷ will be \$450,000.00. COUNTY agrees to pay CONTRACTOR the Charges at the times and in the amounts set forth in **Exhibit H – Schedule of Rates**.
- 8.2 COUNTY does not guarantee any minimum or maximum number of dollars to be spent under this AGREEMENT.
- 8.3 CONTRACTOR shall invoice COUNTY annually for subscription services. For all other services provided by CONTRACTOR under this AGREEMENT, CONTRACTOR shall invoice COUNTY within thirty (30) days from when CONTRACTOR provides the services.
- 8.4 Invoices shall be mailed to:
- Monterey County Health Department – EMS Bureau
1270 Natividad Road
Salinas, Ca. 93906
Attn: Accounts Payable
- 8.5 CONTRACTOR shall reference the AGREEMENT number on all invoices submitted to the COUNTY. The invoice shall set forth the amounts due and payable. CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice.
- 8.6 For professional services and technical consulting services not covered under the standard recurring software subscription, maintenance/support, COUNTY will submit a request to CONTRACTOR in writing and CONTRACTOR must provide a written quote for COUNTY review and approval.
- 8.7 All invoices for professional services and technical consulting services not covered under the standard recurring software subscription, maintenance/support must have the following information:
- 8.7.1 Emergency Medical Services Contact
 - 8.7.2 Date
 - 8.7.3 Duration of Service
 - 8.7.4 Description of professional and technical consulting services
 - 8.7.5 Amount due and payable
- 8.8 COUNTY shall certify the invoice, either in the requested amount or in such other amount as COUNTY approves in conformity with this AGREEMENT, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-

Controller shall pay the uncontested amount certified within 30 days of receiving the certified invoice.

9.0 TAXES

The Charges set forth in this AGREEMENT do not include any taxes. Where applicable, there will be added to such Charges, and COUNTY will pay, amounts equal to any taxes (however designated, levied, or based) on such Charges including, but not limited to, state and local sales, privilege, property, use or excise taxes, but not including taxes based on the net income of CONTRACTOR. If COUNTY claims a tax exemption, COUNTY will provide to CONTRACTOR a certificate of exemption from taxes, or other evidence sufficient to permit CONTRACTOR to exclude taxes from Charges.

10.0 INDEMNIFICATION

10.1 Indemnification by CONTRACTOR: Intellectual Property Infringement. In the event of any claim by a third party against COUNTY (the "Claim"), alleging that the use of the Licensed Program/s infringes upon any intellectual property rights of such third party, COUNTY will promptly notify CONTRACTOR and CONTRACTOR will defend COUNTY and its officers, agents, and employees against such Claim in COUNTY'S name but at CONTRACTOR's expense, and will indemnify and hold harmless COUNTY against any liability paid by COUNTY, including but not limited to attorneys' fees and disbursements, arising out of such Claim. In the event such an infringement is found and CONTRACTOR cannot either procure the right to continued use of the Licensed Programs, or, within forty-five (45) days of such finding, and, if CONTRACTOR has a right to appeal, the exhaustion of those rights by CONTRACTOR, (unless such period is extended by COUNTY), replace or modify the Licensed Programs with a non-infringing program of comparable quality and functionality, then CONTRACTOR shall terminate the license of the Licensed Programs, and will refund to COUNTY all fees, including license and professional service fees, paid by COUNTY, pursuant to this AGREEMENT, from the date upon which the claim arises due to the COUNTY's use of the Licensed Programs, until the date of termination. CONTRACTOR will not have any liability under Section 10(b), and CONTRACTOR will be indemnified by COUNTY with respect to any Claim, to the extent that the Claim is based upon (i) the use of the Licensed Programs in combination with other products or services not made or furnished by CONTRACTOR, provided that the Licensed Programs alone are not the cause of such Claim; or (ii) the modification of the Licensed Programs or any portion thereof by anyone other than CONTRACTOR, provided that the Licensed Programs in unmodified form are not the cause of such Claim.

10.2 CONTRACTOR shall indemnify, defend, and hold harmless COUNTY, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this AGREEMENT, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or

death arising out of or connected with CONTRACTOR's performance of this AGREEMENT, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of COUNTY. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

- 10.3 **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. EXCEPT IN THE EVENT OF ACTUAL DAMAGES RESULTING FROM A PARTY'S SOLE NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY ACTUAL DAMAGES IN EXCESS OF THE AGGREGATE AMOUNT THAT CONTRACTOR HAS, PRIOR TO SUCH TIME, COLLECTED FROM THE COUNTY 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 CUSTOMER DATA OR FROM UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION, NOT CONTROLLED BY THAT PARTY, 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 EACH PARTY. FURTHER, EACH PARTY'S WILLINGNESS TO AGREE TO THE LIMITATIONS CONTAINED IN THIS SECTION WAS MATERIAL TO ENTERING INTO THIS AGREEMENT.

11.0 WARRANTIES

- 11.1 *Licensed Programs.* CONTRACTOR warrants that the Licensed Programs hosted by CONTRACTOR will substantially conform in all material respects with the requirements of this AGREEMENT and their Specifications. If a Problem or Defect occurs while COUNTY is receiving Support Services, CONTRACTOR will correct the Problem or Defect in accordance with the support services provisions set forth in Exhibit B – Software Subscription Service Level.
- 11.2 *Infringement.* CONTRACTOR further represents and warrants that it has the right to grant the license subscriptions granted to COUNTY hereunder and that to the best of CONTRACTOR's knowledge the Licensed Programs do not infringe upon or violate the United States patent rights of any third party and do not infringe upon or violate the copyright, or trade secret right of any third party.

- 11.3 The limited warranty described under Section 11.1 will not apply unless COUNTY's hardware and software system components meet CONTRACTOR'S minimum requirements as described in Exhibit F Data Security & Compliance.
- 11.4 *Viruses and Disabling Mechanisms.* CONTRACTOR shall use commercially reasonable measures to screen the Licensed Programs to avoid introducing any virus or other destructive programming that are designed (i) to permit unauthorized access or use by third parties to the software installed on COUNTY'S systems, or (ii) to disable or damage COUNTY's systems. CONTRACTOR shall not insert into the Licensed Programs any code or other device that would have the effect of disabling or otherwise shutting down all or any portion of the Licensed Programs. CONTRACTOR shall not invoke such code or other device at any time, including upon expiration or termination of this AGREEMENT for any reason.
- 11.5 *Services.* CONTRACTOR warrants that all services provided by CONTRACTOR to COUNTY under this AGREEMENT shall be performed in a workmanlike manner.
- 11.6 *No Litigation.* CONTRACTOR further warrants there is no pending or threatened litigation that would have a material adverse impact on its performance under this AGREEMENT.
- 11.7 *Compliance with Applicable Law.* CONTRACTOR warrants that the services provided under this AGREEMENT and COUNTY's permitted use of the Licensed Programs shall comply with applicable federal, state, and local laws and regulations.
- 11.8 *Authority.* CONTRACTOR has the fully power, capacity and authority to enter into and perform the AGREEMENT and to make the grant of rights contained herein.

12.0 INSURANCE

12.1 Evidence of Coverage:

Prior to commencement of this AGREEMENT, CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, CONTRACTOR, upon request, shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to COUNTY's Contracts/Purchasing Department unless otherwise directed. CONTRACTOR shall not receive a "Notice to Proceed" with the work under this AGREEMENT until it has obtained all insurance required and COUNTY has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of CONTRACTOR.

12.2 Qualifying Insurers:

All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to

the current Best's Key Rating Guide or a company of equal financial stability that is approved by County's Purchasing Manager.

12.3 Insurance Coverage Requirements:

Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this AGREEMENT a policy or policies of insurance with the following minimum limits of liability:

- 12.3.1 Commercial General Liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.
- 12.3.2 Business Automobile Liability Insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this AGREEMENT, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.
- 12.3.3 Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this AGREEMENT, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.
- 12.3.4 Professional Liability Insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, CONTRACTOR shall, upon the expiration or earlier termination of this AGREEMENT, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this AGREEMENT.

12.4 Other Requirements:

- 12.4.1 All insurance required by this AGREEMENT shall be with a company acceptable to COUNTY and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this AGREEMENT, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this AGREEMENT.
- 12.4.2 Each liability policy shall provide that COUNTY shall be given notice in writing at least thirty (30) days in advance of any endorsed reduction in coverage or limit,

cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this AGREEMENT, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

12.4.3 Commercial general liability and automobile liability policies shall **provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds** with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that **such insurance is primary** insurance to any insurance or self-insurance maintained by COUNTY and that the insurance of **the Additional Insureds shall not be called upon to contribute** to a loss covered by CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

12.4.4 Prior to the execution of this AGREEMENT by COUNTY, CONTRACTOR shall file certificates of insurance with the COUNTY's Contract Administrator and COUNTY's Contracts/Purchasing Division, showing that CONTRACTOR has in effect the insurance required by this AGREEMENT. CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this AGREEMENT, which shall continue in full force and effect.

12.4.5 CONTRACTOR shall at all times during the term of this AGREEMENT maintain in force the insurance coverage required under this AGREEMENT and shall send, without demand by COUNTY, annual certificates to COUNTY's Contract Administrator and COUNTY's Contracts/Purchasing Division. If the certificate is not received by the expiration date, COUNTY shall notify CONTRACTOR and CONTRACTOR shall have thirty calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this AGREEMENT, which entitles COUNTY, at its sole discretion, to terminate this AGREEMENT immediately.

13.0 ACCESS TO AND AUDIT OF RECORDS

13.1 **COUNTY Records.** When this AGREEMENT expires or terminates, CONTRACTOR shall return to COUNTY any COUNTY records which CONTRACTOR used or received from COUNTY to perform services under this Agreement.

13.2 **Maintenance of Records.** CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this AGREEMENT. CONTRACTOR shall maintain

such records for a period of at least three years after receipt of final payment under this AGREEMENT. If any litigation, claim, negotiation, audit exception, or other action relating to this AGREEMENT is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.

- 13.3 Access to and Audit of Records. Pursuant to Government Code section 8546.7, if this AGREEMENT involves the expenditure of public funds in excess of \$10,000, the parties to this AGREEMENT may be subject, at the request of the COUNTY or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this AGREEMENT for a period of three years after final payment under the AGREEMENT.

14.0 INTELLECTUAL PROPERTY RIGHTS

- 14.1 All data provided by COUNTY and designee belongs to COUNTY. All records compiled by CONTRACTOR in completing the work described in this AGREEMENT, including but not limited to written reports, graphs, charts, including but not exclusive to the content of the database hosted by CONTRACTOR, COUNTY specific and proprietary information and all other similar recorded data, shall become and remain the property of COUNTY. Use or distribution of COUNTY data by CONTRACTOR is prohibited unless CONTRACTOR obtains prior written consent from COUNTY.
- 14.2 For systems hosted or stored on equipment not owned by COUNTY, CONTRACTOR will ensure that COUNTY has full access to its data 24 x7x365, except during scheduled maintenance periods. Upon Termination of this AGREEMENT for any reason, Section 14.4 shall apply.
- 14.3 Notwithstanding anything to the contrary contained in this AGREEMENT, it is understood and agreed that CONTRACTOR shall retain all of its rights in its proprietary information including, without limitation, methodologies and methods of analysis, ideas, concepts, expressions, know how, methods, techniques, skills, knowledge and experience possessed by CONTRACTOR prior to, during, and after this AGREEMENT.
- 14.4 Upon termination of this Agreement according to the terms specified in Section 7, CONTRACTOR shall provide a copy of the data in machine readable format within thirty days of Agreement termination.

15.0 FORCE MAJEURE

Neither party will be responsible for delays or failures in performance resulting from acts or events beyond its reasonable control, including but not limited to, acts of nature, governmental actions, acts of terrorism, fire, labor difficulties or shortages, civil disturbances, transportation problems, interruptions of power supply or communications or natural disasters, provided such party takes reasonable efforts to minimize the effect of such acts or events.

16.0 GENERAL PROVISIONS

- 16.1 **Governing Law.** This AGREEMENT will be construed in accordance with the laws of the State of California, without giving effect to the conflict of law rules thereof. Both parties agree this AGREEMENT does not constitute a consumer transaction.
- 16.2 **Entire Agreement.** This AGREEMENT and the schedules and exhibits attached hereto contain the entire understanding of the parties with respect to the matter contained herein. There are no promises, covenants or undertakings contained in any other writing or oral communication. In the event of any conflict between or among the documents comprising this AGREEMENT, the latest dated document will prevail.
- 16.3 **Amendments.** This AGREEMENT may not be amended or modified except in a writing signed by authorized representatives of the parties.
- 16.4 **Waiver.** A waiver of a breach or default under this AGREEMENT will not be a waiver of any subsequent breach or default. Failure of either party to enforce compliance with any term or condition of this AGREEMENT will not constitute a waiver of such term or condition.
- 16.5 **Insolvency.** In the event that either party will cease conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under a Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then (at the option of the other party) this AGREEMENT will terminate and be of no further force and effect and any property or rights of such other party, whether tangible or intangible, will forthwith be returned to it.
- 16.6 **Conflict of Interest.** CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this AGREEMENT, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this AGREEMENT.
- 16.7 **Amendment.** This AGREEMENT may be amended or modified only by an instrument in writing signed by COUNTY and CONTRACTOR.
- 16.8 **Waiver.** Any waiver of any terms and conditions of this AGREEMENT must be in writing and signed by COUNTY and CONTRACTOR. A waiver of any of the terms and conditions of this AGREEMENT shall not be construed as a waiver of any other terms or conditions in this AGREEMENT.
- 16.9 **Contractor.** The term "CONTRACTOR" as used in this AGREEMENT includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this AGREEMENT.
- 16.10 **Disputes.** CONTRACTOR shall continue to perform under this AGREEMENT during any dispute, provided that dispute does not involve COUNTY's non-payment of non-disputed invoices.
- 16.11 **Assignment and Subcontracting.** CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this AGREEMENT without the prior written consent of COUNTY. None of the services covered by this AGREEMENT shall be subcontracted

without the prior written approval of COUNTY. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this AGREEMENT. Assignment. The assignment of this AGREEMENT to a majority owned affiliate of CONTRACTOR or CONTRACTOR's parent corporation will not require consent of COUNTY, provided CONTRACTOR provides thirty (30) days prior notice to COUNTY. COUNTY may, however, assign all of its rights under this AGREEMENT to an assignee who acquires all or substantially all of the assets of COUNTY, is not a competitor of CONTRACTOR, and has financial resources at least equal to those of COUNTY. Any permitted assignee will assume in writing, all obligations of the assignor.

- 16.12 Successors and Assigns. This AGREEMENT and the rights, privileges, duties, and obligations of COUNTY and CONTRACTOR under this AGREEMENT, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 16.13 Headings. The headings are for convenience only and shall not be used to interpret the terms of this AGREEMENT.
- 16.14 Time is of the Essence. Time is of the essence in each and all of the provisions of this AGREEMENT.
- 16.15 Non-exclusive AGREEMENT. This AGREEMENT is non-exclusive and both COUNTY and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 16.16 Construction of AGREEMENT. COUNTY and CONTRACTOR agree that each party has fully participated in the review and revision of this AGREEMENT and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this AGREEMENT or any amendment to this AGREEMENT.
- 16.17 Counterparts. This AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same AGREEMENT.
- 16.18 Authority. Any individual executing this AGREEMENT on behalf of the COUNTY or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this AGREEMENT on behalf of such party and bind the party to the terms and conditions of this AGREEMENT.
- 16.19 Integration. This AGREEMENT, including the exhibits, represent the entire AGREEMENT between COUNTY and CONTRACTOR with respect to the subject matter of this AGREEMENT and shall supersede all prior negotiations, representations, or agreements, either written or oral, between COUNTY and CONTRACTOR as of the effective date of this AGREEMENT, which is the date that COUNTY signs the AGREEMENT.
- 16.20 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this AGREEMENT and the Provisions of any exhibit or other attachment to this AGREEMENT, the provisions of this AGREEMENT shall prevail and control.

17.0 NOTICES

Notices required to be given to the respective parties under this AGREEMENT shall be deemed given by any of the following means: (1) when personally delivered to the COUNTY's Contract Administrator or to CONTRACTOR's responsible officer; (2) when personally delivered to the party's principal place of business during normal business hours, by leaving notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) 24 hours after the notice is transmitted by FAX machine to the other party, at the party's FAX number specified pursuant to this AGREEMENT, provided that the party giving notice by FAX must promptly confirm receipt of the FAX by telephone to the receiving party's office; (4) emailed; or, (5) three (3) days after the notice is deposited in the U. S. mail with first class or better postage fully prepaid, addressed to the party as indicated below.

Notices mailed or faxed to the parties shall be addressed as follows:

TO THE COUNTY:

Health Department, Emergency Medical Services
Michael Petrie, Bureau Chief
County of Monterey, Health Department
1270 Natividad Road
Salinas, CA 93906
Tel. No.: (831) 7554964 Fax No.: (831) 775-8029
Email: PetrieM@co.monterey.ca.us

TO THE CONTRACTOR:

ESO Solutions, Inc.
Chris Dillie, CEO
9020 North Capital of Texas Highway, Ste II-300
Austin, TX 78759
Tel. No.: (866) 766-9471 Fax No.: (512) 687-5190
Email: legal@esosolutions.com

IN WITNESS WHEREOF, COUNTY and CONTRACTOR execute this AGREEMENT as follows:

MONTEREY COUNTY


Elsa Jimenez, Director of Health

Dated: 04/26/2017

Approved as to Fiscal Provisions:


Gary Giboney, Auditor/Controller

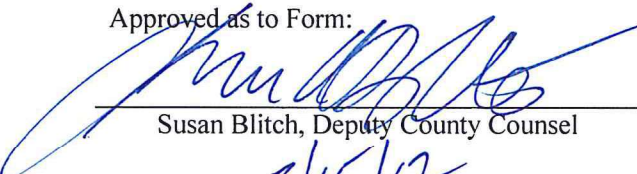
Dated: 3/16/17

Approved as to Liability Provisions:


Steve Mauck, Risk Management

Dated: _____

Approved as to Form:


Susan Blitch, Deputy County Counsel

Dated: 3/15/17

Contracts/Purchasing Officer

Dated: _____

ESO SOLUTIONS, INC.

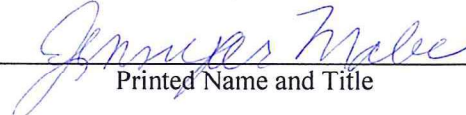
By: 

Signature of Chair, President, or
Vice-President

Chris Dillie, CEO & President
Printed Name and Title

Dated: 3/2/17

By: Jennifer Mabe, CFO
(Signature of Secretary, Asst. Secretary, CFO,
Treasurer or Asst. Treasurer)*


Printed Name and Title

Dated: 3/2/17

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

RFP #10588
Agreement between County of Monterey and
ESO Solutions, Inc.

EXHIBIT B

ePCR SUBSCRIPTION AGREEMENT

This Subscription Agreement (the "**Agreement**") is entered into this **31st** day of **March, 2017** ("**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 II-300, Austin, Texas 78759 ("**ESO**"), and the County of Monterey, a political subdivision of the State of California, with its principal place of business at 1270 Natividad Road, Salinas, CA 93906 ("**Customer**") (each a "**Party**" and collectively the "**Parties**").

WHEREAS, ESO is in the business of providing software services (the "**Services**") to businesses and municipalities; and

WHEREAS, Customer desires to obtain these Services from ESO, all upon the terms and conditions set forth herein;

NOW, THEREFORE, for and in consideration of the agreement made, and the payments to be made by Customer, the Parties mutually agree to the following:

1. **Services.** ESO agrees to provide Customer the Services selected by Customer on Exhibit A attached hereto and incorporated by reference herein. Customer agrees that Services purchased hereunder are neither contingent on the delivery of any future functionality or future features, nor dependent on any oral or written public comments made by ESO regarding future functionality or future features.
2. **Subscription Fees, Invoices and Payment Terms.**
 - a. **Payment of Invoices.** Customer shall pay the full amount of invoices within thirty (30) days of receipt (the "**Due Date**"). Customer is responsible for providing complete and accurate billing and contact information to ESO and to notify ESO of any changes to such information.
 - b. **Disputed Invoices.** If Customer in good faith disputes a portion of an invoice, Customer shall remit to ESO, by the Due Date, full payment of the undisputed portion of the invoice. In addition, Customer must submit written documentation: (i) identifying the disputed amount, (ii) an explanation as to why the Customer believes this amount is incorrect, (iii) what the correct amount should be, and (iv) written evidence supporting Customer's claim.
3. **Termination.**
 - a. **Termination by Customer 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 Customer ("**ESO Default**"), Customer may terminate this Agreement without incurring further liability, except for the payment of all accrued but unpaid Subscription Fees. 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*, Customer may terminate the affected Service(s) without liability to ESO.
 - b. **Termination by ESO for Customer Default.** ESO may terminate this Agreement with no further liability if (i) Customer fails to pay for Services as required by this Agreement and such failure remains uncorrected for five (5) days following written notice from ESO, or (ii) Customer 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 (collectively referred to as "**Customer Default**"). In the event of a Customer Default, ESO shall have the right to (i) terminate this Agreement; (ii) suspend all Services being provided to Customer; (iii) terminate the right to use the Software on the web and/or mobile devices; (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 Customer 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 ESO terminates this Agreement due to a Customer Default, Customer shall remain liable for all accrued Subscription Fees and other charges.
4. **Delivery of Data upon Expiration or Termination of Agreement.** If Customer requests its data within thirty (30) days of expiration of this Agreement, or the termination of this Agreement pursuant to Section 4 above, ESO shall deliver to Customer its data. ESO shall make reasonable and good faith efforts to accommodate Customer's preference for the type of media for delivery. Customer shall reimburse ESO for the cost of the media on which Customer's data is delivered to Customer.

5. **System Maintenance.** In the event ESO determines that it is necessary to interrupt the Services or that there is a potential for Services to be interrupted for the performance of system maintenance, ESO will use good-faith efforts to notify Customer prior to the performance of such maintenance and will schedule such maintenance during non-peak hours (midnight to 6 a.m. Central Standard Time). In no event shall interruption of Services for system maintenance constitute a failure of performance by ESO.
6. **Access to Internet.** Customer has sole responsibility for obtaining, maintaining, and securing its connections to the Internet, and ESO makes no representations to Customer regarding the reliability, performance or security of any particular network or provider.
7. **Mobile Software.** If Customer elects to use ESO's Mobile Software (the "***Software***"), the provisions of this Section shall apply.
 - a. **Use of Software.** Subject to the terms, conditions and restrictions in this Agreement and in exchange for the Mobile Software Interface Fees and/or Subscription Fees, ESO hereby grants to Customer a non-exclusive, world-wide, non-transferable rights, for the Term of this Agreement, to use and copy (for installation and backup purposes only) the Software to the units for which the Mobile Software Interface has been purchased.
 - b. **Ownership and Restrictions.** This Agreement does not convey any rights of ownership in or title to the Software or any copies thereof. All right, title and interest in the Software and any copies or derivative works thereof shall remain the property of ESO. Customer will not: (i) disassemble, reverse engineer or modify the Software; (ii) allow any third party to use the Software; (iii) use the Software as a component in any product or service provided by Customer to a third party; (iv) transfer, sell, assign, or otherwise convey the Software; (v) remove any proprietary notices placed on or contained within the Software; or (vi) copy the Software except for backup purposes. Customer agrees to keep the Software free and clear of all claims, liens, and encumbrances.
 - c. **Mobile Software Interface Fee.** The Mobile Software Interface Fee is non-refundable. The Software shall be deemed accepted upon delivery to Customer.
 - d. **Title.** ESO hereby represents and warrants to Customer that ESO is the owner of the Software or otherwise has the right to grant to Customer the rights set forth in this Agreement. In the event of a breach or threatened breach of the foregoing representation and warranty, Customer's sole remedy shall be to require ESO to either: (i) procure, at ESO's expense, the right to use the Software, or (ii) replace the Software or any part thereof that is in breach and replace it with Software of comparable functionality that does not cause any breach.
8. **Support and Updates.** During the Term of this Agreement, ESO shall provide Customer the support services and will meet the service levels as set forth in Exhibit B attached hereto and incorporated herein. ESO will also provide Updates to Customer, in accordance with Exhibit B.
9. **Other Services.** Upon request by Customer, ESO may provide services related to the Software other than the standard support described above at ESO's then-current labor rates. This may include on-site consultation, configuration, and initial technical assistance and training for the purpose of installing the Software and training selected personnel on the use and support of the Software. ESO shall undertake reasonable efforts to accommodate any written request by Customer for such professional services.
10. **Indemnification by Customer.** Customer will defend and indemnify ESO from any and all claims brought by third parties against ESO and will hold ESO harmless from all corresponding losses incurred by ESO arising out of or related to (i) Customer's misuse of the Services and/or Software, (ii) any services provided by Customer to third parties, or (iii) Customer's negligence, inaction or omission in connection with the services it provides to third parties.
11. **Acknowledgements and Disclaimer of Warranties.** Customer acknowledges that ESO cannot guarantee that there will never be any outages in ESO network and that no credits shall be given in the event Customer's access to ESO's network is interrupted. THE SERVICES ARE PROVIDED "AS IS." UNLESS OTHERWISE SPECIFIED HEREIN, ESO MAKES NO REPRESENTATION OR WARRANTY TO CUSTOMER 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.

- 12. Confidential Information.** “*Confidential Information*” shall mean all information disclosed in writing by one Party to the other Party that is clearly marked “CONFIDENTIAL” or “PROPRIETARY” by the disclosing Party at the time of disclosure or which reasonably should be understood to be confidential given the nature of the information and the circumstances of 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 wrongful act 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.

A recipient of Confidential Information shall not disclose the information to any person or entity except for the recipients and/or its employees, contractors and consultants who have a need to know such Confidential Information. The recipient may disclose Confidential Information pursuant to a judicial or governmental request, requirement or order; provided that the recipient shall take all reasonable steps to give prior notice to the disclosing Party.

Confidential Information shall not be disclosed to any third party without the prior written consent of the owner of the Confidential Information. The recipient shall use Confidential Information only for purposes of this Agreement and shall 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 reasonable degree of care. Confidential Information shall remain the property of the disclosing Party shall be returned to the disclosing Party or destroyed upon request of the disclosing Party. Because monetary damages may be insufficient in the event of a breach or threatened breach of the foregoing provisions, the affected Party may be entitled to seek an injunction or restraining order in addition to such other rights or remedies as may be available under this Agreement, at law or in equity, including but not limited to monetary damages.

13. 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. 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, Customer agrees that ESO may use Customer’s name and logo in ESO sales presentations, without Customer’s prior written consent, during the Term of this Agreement, but only for the purposes of identifying the Customer as a customer of ESO. Likewise, Customer may use ESO’s name and logo to identify ESO as a vendor of Customer.
- c. Aggregate Data Reporting. Customer hereby grants ESO the right to collect and store its data for aggregate reporting purposes, but in no event shall ESO disclose Protected Health Information (“*PHI*”) unless permitted by law. Moreover, ESO will not identify Customer without Customer’s consent.
- d. 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.
- e. Waiver. No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. If Customer has made any change to the Agreement that Customer 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.
- f. 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.
- g. Taxes and Fees. This Agreement is exclusive of all taxes and fees. Unless otherwise required by law, Customer is responsible for and will remit (or will reimburse ESO for) all taxes of any kind, including sales, use, duty, customs, withholding, property, value-added, and other similar federal, state or local taxes (other than taxes based on ESO’s income) assessed in connection with the Services and/or Software provided to Customer under this Agreement.

- h. 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 Customer.
- i. 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.
- j. 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 above. No Party to this Agreement shall refuse delivery of any notice hereunder.

EXHIBIT C**ePCR 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 Customer that Customer'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 inoperable 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 Customer's use of the Software.
- (f) "**Priority C Error**" means an Error that causes only a minor impact on Customer'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 Customers.
- (h) "**Normal Business Hours**" means 7:00 am to 7:00 pm Monday through Friday, Central Time Zone.

2. **Customer Obligations.**

Customer will provide at least one administrative employee (the "**Administrator**" or "**Administrators**") who will handle all requests for first-level support from Customer's employees with respect to the Software. Such support is intended to be the "front line" for support and information about the Software to Customer's employees. ESO will provide training, documentation, and materials to the Administrators to enable the Administrators to provide technical support to Customer's employees. The Administrators will refer any Errors to ESO's Customer 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 Customer during normal business hours, to the extent practicable. Priority A Errors encountered outside normal business hours may be communicated to the Customer 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 Customer's Administrator will describe to ESO's Customer 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 Customer 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.

Priority of Error	Communicating Error to ESO outside Normal Business Hours	Time in Which ESO Will Commence Verification	Frequency of Periodic Status Reports
Priority A	Telephone or email	Within 30 minutes of notification	Every 1 hour until resolved
Priority B	Telephone or email	Within 2 hours of notification	Every 4 hours until resolved
Priority C	Telephone or email	Within 2 calendar days	Every day until resolved

4. **ESO Server Administration.**

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Agreement between County of Monterey and
ESO Solutions, Inc.

ESO is responsible for maintenance of Server hardware. Server administration includes:

- (a) Monitoring and Response
- (b) Service Availability Monitoring
- (c) Backups
- (d) Maintenance
 - (i) Microsoft Patch Management
 - (ii) Security patches to supported applications and related components
 - (iii) Event Log Monitoring
 - (iv) Log File Maintenance
 - (v) Drive Space Monitoring
- (e) Security
- (f) Virus Definition & Prevention
- (g) Firewall

EXHIBIT D

HOSPITAL DATA EXCHANGE PARTICIPATION AGREEMENT

This Participation Agreement (the "**Agreement**") is entered into this 31st day of March, 2017 (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 II-300, Austin, Texas 78759 ("**ESO**"), and the County of Monterey, a political subdivision of the State of California, with its principal place of business at 1270 Natividad Road, Salinas, CA 93906 (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. 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**").
- 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 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.

4. **Termination.**

- a. **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.
- b. **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.

5. **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.

6. **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.

7. **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.

8. **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 HDE 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.

9. **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.

10. **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.

11. General Provisions.

- k. 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.
- l. 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.
- m. 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.
- n. 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.
- o. 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.
- p. Taxes and Fees. Unless otherwise required by law, Participant is responsible for and will remit (or will reimburse ESO for) all taxes of any kind, including sales, use, duty, customs, withholding, property, value-added, and other similar federal, state or local taxes (other than taxes based on ESO's income) assessed in connection with the Services and/or Software provided to Participant under this Agreement. This Agreement is exclusive of all taxes and fees.
- q. 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.
- r. 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.
- s. 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.

ESO	Participant
ESO Solutions, Inc. 9020 N. Capital of Texas Highway Bldg. II-300 Austin, Texas 78759 Attention: Legal Tel. No: (866) 766-9471 Email: <u>contracts@esosolutions.com</u>	<u>County of Monterey</u> <u>Health Department, Emergency Medical Services</u> <u>1270 Natividad Road</u> <u>Salinas, CA 93906</u> Attention: <u>Michael Petrie, Bureau Chief</u> Tel. No: <u>831-755-4964</u> Email: <u>petriem@co.monterey.ca.us</u>

EXHIBIT E

HOSPITAL DATA EXCHANGE SUPPORT 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 30 minutes of notification	Every 1 hour until resolved
Priority B	Telephone or email	Within 2 hours of notification	Every 4 hours until resolved
Priority C	Telephone or email	Within 2 calendar days	Every day 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 F

GENERAL SECURITY AND COMPLIANCE STANDARDS

ESO uses the Software-as-a-Service (SaaS) model of software delivery. Our Microsoft Azure data hosting facilities are SAS 70, Type II, PCI compliant and meet a number of rigorous requirements that help ensure the security of customer data at all times:

- High Availability Standards – Each data center location offers 24 x 7 x 365 onsite staffing, plus a robust backbone network, redundant power and environmental controls, and other backup equipment designed to keep servers continuously up-and-running.
- ESO's data centers are equipped with video surveillance systems and intercoms and require dual-token authentication for access.
- ESO schedules off-site, automatic client data backups nightly, up to the last committed transaction.
- Disaster Recovery – ESO's disaster recovery measures include built-in redundancy for each component of the hardware infrastructure, including multiple database servers with a Raid-5 configuration.

ESO employs encryption technology to protect client data and communications, including 256-bit SSL Certification and 1024-bit RSA public keys. All HIPAA-sensitive hospital-to-participant outcome data stored on the field device of an ESO EHR user is encrypted. Any data transmitted over HTTPS protocol to the central database is encrypted. In addition, ESO employs strict operating system security, two-factor authentication and database security measures at its data hosting facilities:

- All HIPAA-sensitive data stored on the field device is encrypted.
- Any data transmitted over HTTPS protocol to the central database is encrypted.

Additional safeguards ensure that information is not inadvertently shared with unauthorized individuals on an end user level:

- Email addresses and/or fax numbers are assigned to specific incident locations. If a user wishes to email or fax a record, that record can be sent only to the address or fax number associated with that facility.
- Interoperability directly with receiving facilities via secure VPN and HL7 messaging for delivery of the EMS record directly into the hospital EHR at participating facilities.
- Hospital administrators who are assigned login access using ESO Health Data Exchange will be able to access only the records for patients transferred to their particular hospital.

Health Data Exchange

Health Data Exchange has native support for HL7 integration in any variation of the Version 2 standard. These integrations are typically supported through a network to network secure VPN tunnel as the MLLP protocol doesn't have adequate built in encryption. A directed network connection from Health Data Exchange will make the interface appear as if it was within the communicating facility like an external lab system or registration system. These HL7 streams can be configured to support multiple message types including ADT (Admission/Discharge/Transfer), ORU (Observation/LAB Results), and BAR (Billing/Accounts/Receivable), which are traditionally triggered by event-driven methods within an EHR system and copied to the HDE outbound channel. These messages are then consolidated from stream and allocated to a specific patient entity as a cumulative record of a given visit and accessible as an encounter record from within a patient's continuity of care.

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ESO will provide a HIPAA-compliant message system to send, receive and store clinical data. Additional safeguards ensure that information is not inadvertently shared with unauthorized individuals on an end user level:

- Hospital administrators who are assigned login access using Patient Tracker will be able to access only the records for patients transferred to their particular hospital.
- A robust application security model prevents one ESO Solutions client from accessing another's data — this is reapplied with every request and enforced for the entire duration of a user session.

We anticipate that each facility will have their own security and compliance screening process. We will provide the details necessary to satisfy their individual requirements.

Data Redundancy & Recovery

ESO implements a triple-fault redundant configuration with regard to hardware failure within its production environment. Issues related to hardware failure will not trigger a data recovery process. Availability is maintained through redundant systems and data synchronization. In the event of end-user data loss, the first step is to determine the extent to which data needs to be recovered. The table below provides the possible scenarios and the responses that the ESO team will take to restore consistent data.

Data Single Point Recovery	T-Log replay from point in time
Data Point in Time Recovery	Restore from previous full backup and replay required T-Logs
Data Full Recovery	Restore from previous full backup and replay all T-Logs

Backup Data Availability

ESO maintains the prior days full SQL backup near line and available. 1-24 hours of SQL Transaction Log backups in 15 minute increments are also near line and available. For data outside of the prior full SQL backup, restoration from tape is required. Full SQL backups in the previous 7 days are maintained on site and are available to be restored to an alternate file location for use in restoration of data. Any need for data outside the previous 7 days will require tapes to be returned from offsite storage where applicable. Offsite tapes require 4-24 hours to be brought onsite at which point the tape restoration process proceeds as normal.

Data Restoration Prioritization

ESO will prioritize SQL data restoration such that security related data proceeds customer facing data. Restoration will then follow with the real-time application data being restored ahead of reporting data and finally administrative data being restored last.

EXHIBIT G HARDWARE SPECIFICATIONS

ESO EHR HARDWARE / SOFTWARE COMPATIBILITY

Note: To access Admin, QM and Reports you will need to continue to use Internet Explorer or Firefox.

Internet Connectivity (Web)

CARDIAC MONITOR INTEGRATION NEEDS	Microsoft Windows		
	Tested Devices	Supported Operating Systems	Supported Web Browsers
	NONE	✓ Windows 7 ✓ Windows 8 ✓ Microsoft Surface Pro 3 ✓ Windows 10	✓ Chrome (Latest) ✓ Firefox (Latest) ✓ IE 10 ✓ IE 11 ✓ Edge 20
	PHYSIO CONTROL CLOUD	✓ Windows 7 ✓ Windows 8 ✓ Windows 10	✓ Chrome (Latest) ✓ Firefox (Latest) ✓ IE 10 ✓ IE 11 ✓ Edge 20
	PHYSIO CONTROL LOCAL	✓ Windows 7 ✓ Windows 8 ✓ Microsoft Surface Pro 3 ✓ Windows 10	✓ Chrome (Latest) ✓ Firefox (Latest) ✓ IE 10 ✓ IE 11 ✓ Edge 20
	ZOLL LOCAL	✓ Windows 7 ✓ Windows 8 ✓ Windows 10	✓ Chrome (Latest) ✓ Firefox (Latest) ✓ IE 10 ✓ IE 11 ✓ Edge 20

CARDIAC MONITOR INTEGRATION NEEDS	Apple OS X / IOS (e.g. iPad Air)		
	Tested Devices	Supported Operating Systems	Supported Web Browsers
	NONE	✓ OS X Desktops ✓ OS X Laptops ✓ iPad Mini (All Versions) 7.9" ✓ iPad Air (All Versions) 9.7"	✓ OS X 10.10 ✓ OS X 10.11 ✓ iOS 8 ✓ iOS 9
	PHYSIO CONTROL CLOUD	✓ OS X Desktops ✓ OS X Laptops ✓ iPad Mini (All Versions) 7.9" ✓ iPad Air (All Versions) 9.7"	✓ Chrome (Latest)* ✓ Firefox (Latest)* ✓ Safari (Latest)
	PHYSIO CONTROL LOCAL	✓ OS X Desktops ✓ OS X Laptops ✓ iPad Mini (All Versions) 7.9" ✓ iPad Air (All Versions) 9.7"	✓ Chrome (Latest)* ✓ Firefox (Latest)* ✓ Safari (Latest)
	ZOLL LOCAL	✓ OS X Desktops ✓ OS X Laptops ✓ iPad Mini (All Versions) 7.9" ✓ iPad Air (All Versions) 9.7"	✓ Chrome (Latest)* ✓ Firefox (Latest)* ✓ Safari (Latest)

*OS X only

No Internet Connectivity (Mobile)

CARDIAC MONITOR INTEGRATION NEEDS	Microsoft Windows	
	Tested Devices	Supported Operating Systems
	NONE	✓ Windows 7 ✓ Windows 8 ✓ Windows 10
	PHYSIO CONTROL CLOUD	✓ Windows 7 ✓ Windows 8 ✓ Windows 10
	PHYSIO CONTROL LOCAL	✓ Windows 7 ✓ Windows 8 ✓ Windows 10
	ZOLL LOCAL	✓ Windows 7 ✓ Windows 8 ✓ Windows 10

Minimum Hardware Specifications

PROCESSOR	Dual-Core 1.5 GHz or faster
MEMORY	2 GB or more
STORAGE	500 MB (ESO EHR software only – operating system, case files, PDFs, and other software not included)
SCREEN RESOLUTION	1024 x 768 or higher

Interfacing Cardiac Monitors

✓ Cable ✓ Bluetooth ✓ Cloud ✓ WiFi

PHILLIPS	MRx ††
PHYSIO-CONTROL	LifePak 12 † † † LifePak 15 † † †
ZOLL	M Series † † E Series † † X Series †

Internet Speed

MINIMUM	10Mbps download 2Mbps upload
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No Internet Connectivity

		Microsoft Windows	
		Supported Devices	Supported Operating Systems
NONE	✓	Windows Desktops	✓ Windows 7
	✓	Windows Laptops	✓ Windows 8
	✓	Microsoft Surface 3	✓ Windows 10
	✓	Motion Tablets	
PHYSIO CONTROL LOCAL	✓	Panasonic Toughpad	
	✓	Panasonic Toughbook	
	✓	Windows Desktops	✓ Windows 7
	✓	Windows Laptops	✓ Windows 8
ZOLL LOCAL	✓	Microsoft Surface 3	✓ Windows 10
	✓	Motion Tablets	
	✓	Panasonic Toughpad	
	✓	Panasonic Toughbook	
PHILLIPS LOCAL	✓	Windows Desktops	✓ Windows 7
	✓	Windows Laptops	✓ Windows 8
	✓	Microsoft Surface 3	✓ Windows 10
	✓	Motion Tablets	
	✓	Panasonic Toughpad	
	✓	Panasonic Toughbook	

Minimum Hardware Specifications

PROCESSOR Dual-Core 1.5 GHz or faster (Netbook class processors like the Intel Atom are not recommended)

MEMORY 2 GB or more

STORAGE 500 MB (ESO EHR software only -- operating system, case files, PDFs, and other software not included)

SCREEN RESOLUTION 1024 x 768 or higher

Interfacing Cardiac Monitors

Cable
 Bluetooth
 Cloud
 Wifi

PHILLIPS MRx

PHYSIO-CONTROL LifePak 12, LifePak 15

ZOLL M Series, E Series, X Series

Internet Speed

MINIMUM 10Mbps download, 2Mbps upload

eso Healthcare Connected

Internet Connectivity

Microsoft Windows			
	Supported Devices	Supported Operating Systems	Supported Browsers
NONE	✓ Windows Desktops	✓ Windows 7	✓ Chrome (Latest)
	✓ Windows Laptops	✓ Windows 8	✓ Safari (Latest)
	✓ Microsoft Surface 3	✓ Windows 10	✓ IE 10
	✓ Motion Tablets		✓ IE 11
	✓ Panasonic Toughpad		✓ Edge 20
PHYSIO CONTROL CLOUD	✓ Windows Desktops	✓ Windows 7	✓ Chrome (Latest)
	✓ Windows Laptops	✓ Windows 8	✓ Safari (Latest)
	✓ Microsoft Surface 3	✓ Windows 10	✓ IE 10
	✓ Motion Tablets		✓ IE 11
	✓ Panasonic Toughpad		✓ Edge 20
PHYSIO CONTROL LOCAL	✓ Windows Desktops	✓ Windows 7	
	✓ Windows Laptops	✓ Windows 8	
	✓ Microsoft Surface 3	✓ Windows 10	
	✓ Motion Tablets		
	✓ Panasonic Toughpad		
ZOLL LOCAL	✓ Windows Desktops	✓ Windows 7	
	✓ Windows Laptops	✓ Windows 8	
	✓ Microsoft Surface 3	✓ Windows 10	
	✓ Motion Tablets		
	✓ Panasonic Toughpad		
PHILLIPS LOCAL	✓ Windows Desktops	✓ Windows 7	
	✓ Windows Laptops	✓ Windows 8	
	✓ Microsoft Surface 3	✓ Windows 10	
	✓ Motion Tablets		
	✓ Panasonic Toughpad		

Note: If you are an Administrator or Quality Manager, you will need to continue to use Internet Explorer to access the Admin and QM modules respectively.

Apple OS X / iOS (e.g. iPad Air)			
	Supported Devices	Supported Operating Systems	Supported Browsers
NONE	✓ OS X Desktops	✓ iOS 8	✓ Safari (Latest)
	✓ OS X Laptops	✓ iOS 9	
	✓ iPad Mini (All Versions) 7.9"	✓ OS X 10.10	
	✓ iPad Air (All Versions) 9.7"	✓ OS X 10.11	
PHYSIO CONTROL CLOUD	✓ OS X Desktops	✓ iOS 8	✓ Safari (Latest)
	✓ OS X Laptops	✓ iOS 9	
	✓ iPad Mini (All Versions) 7.9"	✓ OS X 10.10	
	✓ iPad Air (All Versions) 9.7"	✓ OS X 10.11	
NONE	✓ Galaxy Tab 7" or higher	✓ Android 4	✓ Chrome (Latest)
	✓ Galaxy Note 8.4" or higher	✓ Android 5	
PHYSIO CONTROL CLOUD	✓ Galaxy Tab 7" or higher	✓ Android 4	✓ Chrome (Latest)
	✓ Galaxy Note 8.4" or higher	✓ Android 5	

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EXHIBIT H SCHEDULE OF RATES

Subscription to ESO Suite Recurring Costs	Qty	Max Incidents/Yr	3/31/17 - 3/30/18	3/31/18 - 3/30/19	3/31/19 - 3/30/20
ESO EHR Suite -	1	30,000	64,928.00	64,928.00	64,928.00
Cardiac Monitor Interface	14		8,930.00	8,930.00	8,930.00
Billing Interface	3		-	-	-
CAD Interface	14		9,930.00	9,930.00	9,930.00
Recurring Data Extract			\$ 9,500.00	\$ 9,500.00	\$ 9,500.00
Subtotal			\$ 93,288.00	\$ 93,288.00	\$ 93,288.00

Subscription to Health Data Exchange (HDE)	# of Agencies	3/31/17 - 3/30/18	3/31/18 - 3/30/19	3/31/19 - 3/30/20	3/31/17 - 3/30/18
Patient Volume		20,000	12,000.00	12,000.00	12,000.00
HDE Hospital Side Interface					
Natividad Medical Center	1		2,500.00	2,500.00	2,500.00
Salinas Valley Memorial Hospital	1		5,000.00	5,000.00	5,000.00
Community Hospital of Monterey Peninsula	1		5,000.00	5,000.00	5,000.00
George Mee Memorial Hospital	1		5,000.00	5,000.00	5,000.00
HDE EMS Connection	14		14,000.00	14,000.00	14,000.00
Subtotal			\$ 43,500.00	\$ 43,500.00	\$ 43,500.00

One Time Costs	Qty	Per Diem	3/31/17 - 3/30/18	3/31/18 - 3/30/19	3/31/19 - 3/30/20
Onsite Training	5	995.00	4,975.00		
Travel *			4,661.00		
Professional Services & Technical Consulting			10,000.00	10,000.00	10,000.00
Yearly Total			\$ 156,424.00	\$ 146,788.00	\$ 146,788.00
			Maximum Agreement Amount		\$ 450,000.00

*Estimate only. Will require adherence to County travel policy.

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EXHIBIT I

CONFIDENTIALITY OF PATIENT INFORMATION AND RECORDS

Confidentiality of Patient Information and Records. All patient information and records are confidential. CONTRACTOR shall maintain the confidentiality of all patient records, including billings and computerized records, in accordance with all state and federal law relating to confidentiality of patient records and patient information, including but not limited to: Welfare and Institutions Code sections 5328, *et seq.*, 14100.2, and 10850, *et seq.*; Title 45 Code of Federal Regulations section 205.50, and Title 42, CFR, section 431.300 *et seq.*

"Patient information" or "confidential information" includes any patient/recipient of services identifying information including, but not limited to: name, identifying numbers, symbol, fingerprint, photograph or voice print. In addition, "patient information" or "confidential information" includes all information CONTRACTOR has obtained about a patient/recipient of services whether or not a documentary record of such information exists.

Use and Disclosure of Patient Information. Confidential information gained by CONTRACTOR from access to records and from contact with patients/recipients of service and complainants shall be used by CONTRACTOR only in connection with its performance under this Agreement. CONTRACTOR shall not disclose patient records or information, including the identities of patients/recipients of service, without proper consent to such disclosure or a court order requiring disclosure. In addition, CONTRACTOR shall obtain COUNTY's authorization to such disclosure prior to any release of confidential information. The COUNTY, through the Emergency Medical Services Director, shall have access to such confidential information.

Penalty for Unauthorized Disclosure. CONTRACTOR understands that disclosure of patient information in violation of law may subject the party releasing the information to a minimum of \$10,000 in civil damages, as set forth in Welfare and Institutions Code Section 5330.

Duty to Warn. CONTRACTOR understands that persons providing services under this Agreement may, in certain situations involving a patient or recipient of services who is a danger to himself or others, have a duty to warn third parties of such danger and should consult supervisory staff and/or legal counsel about such duty to warn as appropriate.

Dissemination of these Confidentiality Provisions. CONTRACTOR shall inform all its officers, employees, agents, and subcontractors providing services hereunder of these provisions.

EXHIBIT J

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("**Agreement**") dated this **31st** day of **March, 2017** ("**Effective Date**"), is entered into by and between ESO Solutions, Inc. ("**Vendor**"), a Texas corporation, and the County of Monterey, a political subdivision of the State of California ("**Covered Entity**"), 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 the Parties are also committed to complying with the California Confidentiality of Medical Information Act, Ca. Civil Code §§ 56 et seq. ("**CMIA**"), where applicable. Business Associate acknowledges that the CMIA prohibits Business Associate from further disclosing the PHI it receives from Covered Entity where such disclosure would be violative of the CMIA;

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. 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.**

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Agreement between County of Monterey and
ESO Solutions, Inc.

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:

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ESO Solutions, Inc.

- 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. **Waiver.**

No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach.

15. **Assignment.**

Neither Party may assign (whether by operation of law or otherwise) any of its rights any of its obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, a Party shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor entity, whether by merger, acquisition, change in control, or other transaction involving the sale of all or substantially all of that Party's assets, without prior approval of the other Party.

16. **Severability.**

Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

17. **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.

18. Nature of Agreement; 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. Vendor is an independent contractor and not an agent of Covered Entity. This Agreement does not express or imply any commitment to purchase or sell goods or services.

19. 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.

20. 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.

21. 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) electronic mail. Notices shall be sent to the addresses below. If no address is listed below, then the Parties agree that sending a notice to the last known address of said Party is a valid form of notice. No Party to this Agreement shall refuse delivery of any notice hereunder.

Vendor:	Covered Entity:
ESO Solutions, Inc. 9020 N. Capital of Texas Highway Bldg. II-300 Austin, Texas 78759 Attention: Legal Tel. No: (866) 766-9471 Email: contracts@esosolutions.com	County of Monterey Health Department, Emergency Medical Services 1270 Natividad Road Salinas, CA 93906 Attention: <u>Michael Petrie, Bureau Chief</u> Tel. No: <u>831-755-4964</u> Email: petriem@co.monterey.ca.us



CERTIFICATE OF LIABILITY INSURANCE

1/1/2022

DATE (MM/DD/YYYY)

8/3/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Insurance Brokers, LLC CA License #OF15767 Three Embarcadero Center, Suite 600 San Francisco CA 94111 (415) 568-4000	CONTACT NAME: PHONE (A/C. No. Ext): FAX (A/C. No): E-MAIL ADDRESS: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 80%;">INSURER(S) AFFORDING COVERAGE</th> <th style="width: 20%;">NAIC #</th> </tr> <tr> <td>INSURER A: The Phoenix Insurance Company</td> <td>25623</td> </tr> <tr> <td>INSURER B: The Travelers Indemnity Company</td> <td>25658</td> </tr> <tr> <td>INSURER C: Chubb Indemnity Insurance Company</td> <td>12777</td> </tr> <tr> <td>INSURER D: Allied World Assurance Company (U.S.) Inc.</td> <td>19489</td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: The Phoenix Insurance Company	25623	INSURER B: The Travelers Indemnity Company	25658	INSURER C: Chubb Indemnity Insurance Company	12777	INSURER D: Allied World Assurance Company (U.S.) Inc.	19489	INSURER E:		INSURER F:	
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INSURER D: Allied World Assurance Company (U.S.) Inc.	19489														
INSURER E:															
INSURER F:															
INSURED 1494157 ESO Solutions, Inc. 11500 Alterra Parkway Austin TX 78758															

COVERAGES ESOSO03

CERTIFICATE NUMBER: 17559660

REVISION NUMBER: XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y	Y	ZLP-91N40746-21	5/1/2021	5/1/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> Comp Ded: \$1,000 <input checked="" type="checkbox"/> Coll Ded: \$1,000	Y	Y	BA-1S849937-21	5/1/2021	5/1/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$			NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX AGGREGATE \$ XXXXXXXX \$ XXXXXXXX
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	N/A	7182-73-01	1/1/2021	1/1/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	E&O/Cyber	N	N	0312-8654 (E&O/Cyber)	5/3/2021	5/3/2022	\$5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

THIS CERTIFICATE SUPERSEDES ALL PREVIOUSLY ISSUED CERTIFICATES FOR THIS HOLDER, APPLICABLE TO THE CARRIERS LISTED AND THE POLICY TERM(S) REFERENCED. County Of Monterey, Its Officers, Agents & Employees, is an Additional Insured with respect to liability arising out of the operations of the insured and to the extent provided by the policy language or endorsement issued or approved by the insurance carrier. Waiver of Subrogation applies per attached endorsement or policy language. Insurance provided to Additional Insured is primary and non-contributory as per the attached endorsements or policy language.

CERTIFICATE HOLDER

CANCELLATION See Attachments

17559660

County Of Monterey
 Contracts/Purchasing Division
 1488 Schilling Place
 Salinas CA 93901

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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Name Insured Schedule

1. ESO Solutions Inc.
2. Backdraft OpCo LLC
3. ERS International LLC



To whom it may concern:

In our continuing effort to provide timely certificate delivery, Lockton Companies is transitioning to paperless delivery of Certificates of Insurance.

To ensure electronic delivery for future renewals of this certificate, we need your email address. Please contact us via one of the methods below, referencing Certificate ID **17559660**.

- Email: PacificeDelivery@lockton.com
- Phone: (213) 689-2300

If you received this certificate through an internet link where the current certificate is viewable, we have your email and no further action is needed.

In the event your mailing address has changed, will change in the future, or you no longer require this certificate, please let us know using one of the methods above.

The above inbox is for automating electronic delivery of certificates only. Please do NOT send future certificate requests to this inbox.

Thank you for your cooperation and willingness in reducing our environmental footprint.

Lockton Insurance Brokers, LLC – Pacific Series

Lockton Insurance Brokers, LLC

License #0F15767

777 S Figueroa Street, 52nd Fl / Los Angeles, CA 90017-5524

213-689-0065 / FAX: 213-689-0550

lockton.com

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

XTEND ENDORSEMENT FOR TECHNOLOGY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

GENERAL DESCRIPTION OF COVERAGE - This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- | | |
|---|---|
| <ul style="list-style-type: none"> A. Non-Owned Watercraft - 75 Feet Long Or Less B. Who Is An Insured - Unnamed Subsidiaries C. Who Is An Insured - Employees Supervisory Positions D. Who Is An Insured - Newly Acquired Or Formed Limited Liability Companies E. Who Is An Insured - Liability For Conduct Of Unnamed Partnerships Or Joint Ventures F. Blanket Additional Insured - Persons Or Organizations For Your Ongoing Operations As Required By Written Contract Or Agreement G. Blanket Additional Insured - Broad Form Vendors | <ul style="list-style-type: none"> H. Blanket Additional Insured - Controlling Interest I. Blanket Additional Insured - Mortgagees, Assignees, Successors Or Receivers J. Blanket Additional Insured - Governmental Entities - Permits Or Authorizations Relating To Premises K. Blanket Additional Insured - Governmental Entities - Permits Or Authorizations Relating To Operations L. Medical Payments - Increased Limit M. Blanket Waiver Of Subrogation N. Contractual Liability - Railroads 0.
Damage To Premises Rented To You |
|---|---|

PROVISIONS

A. NON—OWNED WATERCRAFT — 75 FEET LONG OR LESS

1. The following replaces Paragraph (2) of Exclusion **g.**, **Aircraft, Auto Or Watercraft**, in Paragraph 2. of **SECTION I — COVERAGES — COVERAGE A — BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

(2) A watercraft you do not own that is:

- (h) 75 feet long or less; and
- (i) Not being used to carry any person or property for a charge;

2. The following replaces Paragraph 2.e. of **SECTION II — WHO IS AN INSURED**:

e. Any person or organization that, with your express or implied

consent, either uses or is responsible for the use of a watercraft that you do not own that is:

- (1) 75 feet long or less; and
- (2) Not being used to carry any person or property for a charge.

B. WHO IS AN INSURED — UNNAMED SUBSIDIARIES

The following is added to **SECTION II WHO IS AN INSURED**:

Any of your subsidiaries, other than a partnership or joint venture, that is not shown as a Named Insured in the Declarations is a Named Insured if:

- a. You are the sole owner of, or maintain an ownership interest of more than 50% in, such subsidiary on the first day of the policy period; and

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- b. Such subsidiary is not an insured under similar other insurance.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal and advertising injury" caused by an offense committed:

- a. Before you maintained an ownership interest of more than 50% in such subsidiary; or
- b. After the date, if any, during the policy period that you no longer maintain an ownership interest of more than 50% in such subsidiary.

For purposes of Paragraph 1. of Section II - Who Is An Insured, each such subsidiary will be deemed to be designated in the Declarations as:

- a. A limited liability company;
- b. An organization other than a partnership, joint venture or limited liability company; or

C. A trust;

as indicated in its name or the documents that govern its structure.

C. WHO IS AN INSURED — EMPLOYEES —SUPERVISORY POSITIONS

The following is added to Paragraph 2.a.(1) of **SECTION II — WHO IS AN INSURED:**

Paragraphs (1)(a), (b) and (c) above do not apply to "bodily injury" to a co-"employee" while in the course of the co-"employee's" employment by you arising out of work by any of your "employees" who hold a supervisory position.

D. WHO IS AN INSURED — NEWLY ACQUIRED OR FORMED LIMITED LIABILITY COMPANIES

The following replaces Paragraph 3. of **SECTION II — WHO IS AN INSURED:**

3. Any organization you newly acquire or form, other than a partnership or joint venture, and of which you are the sole owner or in which you maintain an ownership interest of more than 50%, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only:

- (1) Until the 180th day after you acquire or form the organization or the end of

the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or

- (2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organization, if you report such organization in writing to us within 180 days after you acquire or form it;

- b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed t

- C. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

For the purposes of Paragraph 1. of Section II - Who Is An Insured, each such organization will be deemed to be designated in the Declarations as:

- a. A limited liability company;
- b. An organization, other than a partnership, joint venture or limited liability company; or

C. A trust;

as indicated in its name or the documents that govern its structure.

E. WHO IS AN INSURED — LIABILITY FOR CONDUCT OF UNNAMED PARTNERSHIPS OR JOINT VENTURES

The following replaces the last paragraph of **SECTION II - WHO IS AN INSURED:**

No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations. This paragraph does not apply to any such partnership or joint venture that otherwise qualifies as an insured under Section II - Who Is An Insured.

F. BLANKET ADDITIONAL INSURED — PERSONS OR ORGANIZATIONS FOR YOUR ONGOING OPERATIONS AS REQUIRED BY WRITTEN CONTRACT OR AGREEMENT

The following is added to **SECTION II —WHO IS AN INSURED:**

Any person or organization that is not otherwise an insured under this Coverage Part and that you have agreed in a written

contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

- a. Occurs subsequent to the signing of that contract or agreement; and
- b. Is caused, in whole or in part, by your acts or omissions in the performance of your ongoing operations to which that contract or agreement applies or the acts or omissions of any person or organization performing such operations on your behalf.

The limits of insurance provided to such insured will be the minimum limits that you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.

G. BLANKET ADDITIONAL INSURED — BROAD FORM VENDORS

The following is added to **SECTION II —WHO IS AN INSURED:**

Any person or organization that is a vendor and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

- a. Occurs subsequent to the signing of that contract or agreement; and
- b. Arises out of "your products" that are distributed or sold in the regular course of such vendor's business.

The insurance provided to such vendor is subject to the following provisions:

- a. The limits of insurance provided to such vendor will be the minimum limits that you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
- b. The insurance provided to such vendor does not apply to:
 - (1) Any express warranty not authorized by you or any distribution or sale for a purpose not authorized by you;
 - (2) Any change in "your products" made by such vendor;
 - (3) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the

manufacturer, and then repackaged in the original container;

- (4) Any failure to make such inspections, adjustments, tests or servicing as vendors
- (5) Demonstration, installation, servicing or repair operations, except such operations performed at such vendor's premises in connection with the sale of "your products"; or
- (6) "Your products" that, after distribution or sale by you, have been labeled or relabeled

Coverage under this provision does not apply to:

- a. Any person or organization from whom you have acquired "your products", or any ingredient, part or container entering into, accompanying or containing such products; or
- b. Any vendor for which coverage as an additional insured specifically is scheduled by endorsement.

H. BLANKET ADDITIONAL INSURED — CONTROLLING INTEREST

1. The following is added to SECTION II —WHO IS AN INSURED:

Any person or organization that has financial control of you is an insured with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" that arises out of:

- a. Such financial control; or
- b. Such person's or organization's ownership, maintenance or use of premises leased to or occupied by you.

The insurance provided to such person or organization does not apply to structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

2. The following is added to Paragraph 4. of SECTION II — WHO IS AN INSURED:

This paragraph does not apply to any premises owner, manager or lessor that has financial control of you.

I. BLANKET ADDITIONAL INSURED — J. MORTGAGEES, ASSIGNEES, SUCCESSORS OR RECEIVERS

The following is added to **SECTION II —WHO IS AN INSURED:**

Any person or organization that is a mortgagee, assignee, successor or receiver and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only

with respect to its liability as mortgagee, assignee, successor or receiver for "bodily injury", "property damage" or "personal and advertising injury" that:

- a. Is "bodily injury" or "property damage" that occurs, or is "personal and advertising injury" caused by an offense that is committed, subsequent to the signing of that contract or agreement; and
- b. Arises out of the ownership, maintenance or use of the premises for which that mortgagee, assignee, successor or receiver is required under that contract or agreement to be included as an additional insured on this Coverage Part.

The insurance provided to such mortgagee, assignee, successor or receiver is subject to the following provisions:

- a. The limits of insurance provided to such mortgagee, assignee, successor or receiver will be the minimum limits that you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
- b. The insurance provided to such person or organization does not apply to:
 - (1) Any "bodily injury" or "property damage" that occurs, or any "personal and advertising injury" caused by an offense that is committed, after such contract or agreement is no longer in effect; or
 - (2) Any "bodily injury", "property damage" or "personal and advertising injury" arising out of any structural alterations, new construction or demolition operations performed by or on behalf of such mortgagee, assignee, successor or receiver.

BLANKET ADDITIONAL INSURED — GOVERNMENTAL ENTITIES — PERMITS OR AUTHORIZATIONS RELATING TO PREMISES

The following is added to **SECTION II —WHO IS AN INSURED:**

Any governmental entity that has issued a permit or authorization with respect to premises owned or occupied by, or rented or loaned to, you and that you are required by any ordinance, law, building code or written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of the existence, ownership, use, maintenance, repair, construction, erection or removal of any of the following for which that governmental entity has issued such permit or authorization: advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, elevators, street banners or decorations.

BLANKET ADDITIONAL INSURED — GOVERNMENTAL ENTITIES — PERMITS OR AUTHORIZATIONS RELATING TO OPERATIONS

A.

The following is added to **SECTION II —WHO IS AN INSURED:**

Any governmental entity that has issued a permit or authorization with respect to operations performed by you or on your behalf and that you are required by any ordinance, law, building code or written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of such operations.

The insurance provided to such governmental entity does not apply to:

- a. Any "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the governmental entity; or
- b. Any "bodily injury" or "property damage" included in the "products-completed operations hazard".

MEDICAL PAYMENTS — INCREASED LIMIT

The following replaces Paragraph 7. of **SECTION III — LIMITS OF INSURANCE:**

B.

7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person,

and will be the higher of:

- a. \$10,000; or
- b. The amount shown in the Declarations of this Coverage Part for Medical Expense Limit.

M. BLANKET WAIVER OF SUBROGATION

The following is added to Paragraph 8., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV —COMMERCIAL GENERAL LIABILITY CONDITIONS**:

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

- a. "Bodily injury" or "property damage" that occurs; or
- b. "Personal and advertising injury" caused by an offense that is committed;

subsequent to the execution of the contract or agreement.

N. CONTRACTUAL LIABILITY — RAILROADS

1. The following replaces Paragraph **c.** of the definition of "insured contract" in the **DEFINITIONS** Section:

c. Any easement or license agreement;

2. Paragraph **f.(1)** of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.

O. DAMAGE TO PREMISES RENTED TO YOU

The following replaces the definition of "premises damage" in the **DEFINITIONS** Section:

"Premises damage" means "property damage" to:

- a. Any premises while rented to you or temporarily occupied by you with permission of the owner; or
- b. The contents of any premises while such premises is rented to you, if you rent such premises for a period of seven or fewer consecutive days.

19	<div>Mobile Equipment Subject To of Compulsory Or Financial Responsibility Or Other Motor Vehicle Insurance Law Only</div> <div>Only those "autos" that are land vehicles and that would qualify under the definition of "mobile equipment" under this policy if they were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where they are licensed or principally garaged.</div>
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A. Owned Autos You Acquire After The Policy Begins

1. If Symbols **1, 2, 3, 4, 5, 6 or 19** are entered next to a coverage in Item Two of the Declarations, then you have coverage for "autos" that you acquire of the type described for the remainder of the policy period.
2. But, if Symbol **7** is entered next to a coverage in Item Two of the Declarations, an "auto" you acquire will be a covered "auto" for that coverage only if:
 - a. We already cover all "autos" that you own for that coverage or it replaces an "auto" you previously owned that had that coverage; and
 - b. You tell us within 30 days after you acquire it that you want us to cover it for that coverage.

B. Certain Trailers, Mobile Equipment And Temporary Substitute Autos

If Covered Autos Liability Coverage is provided by this Coverage Form, the following types of vehicles are also covered "autos" for Covered Autos Liability Coverage:

1. "Trailers" with a load capacity of 2,000 pounds or less designed primarily for travel on public roads.
2. "Mobile equipment" while being carried or towed by a covered "auto".
3. Any "auto" you do not own while used with the permission of its owner as a temporary substitute for a covered "auto" you own that is out of service because of its:
 - a. Breakdown;
 - b. Repair;
 - c. Servicing;
 - d. "Loss"; or
 - e. Destruction.

SECTION II - COVERED AUTOS LIABILITY COVERAGE

A. Coverage

We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto".

We will also pay all sums an "insured" legally must pay as a "covered pollution cost or expense" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of covered "autos". However, we will only pay for the "covered pollution cost or expense" if there is either "bodily injury" or "property damage" to which this insurance applies that is caused by the same "accident".

We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense". However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Covered Autos Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

1. Who Is An Insured

The following are "insureds":

- f. You for any covered "auto".
- g. Anyone else while using with your permission a covered "auto" you own, hire or borrow except:
 - (1) The owner or anyone else from whom you hire or borrow a covered "auto".

This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.

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- (2) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.
- (3) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.
- (4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company) or a lessee or borrower or any of their "employees", while moving property to or from a covered "auto".
- (5) A partner (if you are a partnership) or a member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.
- h. Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

2. Coverage Extensions**a. Supplementary Payments**

We will pay for the "insured":

- (1) All expenses we incur.
- (2) Up to \$2,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (3) The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$250 a day because of time off from work.
- (5) All court costs taxed against the "insured" in any "suit" against the "insured" we defend. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the "insured".
- (6) All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the "insured" we defend, but our duty to

pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

These payments will not reduce the Limit of Insurance.

b. Out-of-state Coverage Extensions

While a covered "auto" is away from the state where it is licensed, we will:

- (1) Increase the Limit of Insurance for Covered Autos Liability Coverage to meet the limits specified by a compulsory or financial responsibility law of the jurisdiction where the covered "auto" is being used. This extension does not apply to the limit or limits specified by any law governing motor carriers of passengers or property.
- (2) Provide the minimum amounts and types of other coverages, such as no-fault, required of out-of-state vehicles by the jurisdiction where the covered "auto" is being used.

We will not pay anyone more than once for the same elements of loss because of these extensions.

B. Exclusions

This insurance does not apply to any of the following:

1. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured".

2. Contractual

Liability assumed under any contract or agreement.

But this exclusion does not apply to liability for damages:

- a. Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or
- b. That the "insured" would have in the absence of the contract or agreement.

3. Workers' Compensation

Any obligation for which the "insured" or

the "insured's" insurer may be held liable
under any workers' compensation,
disability benefits

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1. Loss Payment - Physical Damage Coverages

At our option, we may:

- a. Pay for, repair or replace damaged or stolen property;
- b. Return the stolen property, at our expense. We will pay for any damage that results to the "auto" from the theft; or
- c. Take all or any part of the damaged or stolen property at an agreed or appraised value.

If we pay for the "loss", our payment will include the applicable sales tax for the damaged or stolen property.

2. Transfer Of Rights Of Recovery Against Others To Us

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

B. General Conditions**3. Bankruptcy**

Bankruptcy or insolvency of the "insured" or the "insured's" estate will not relieve us of any obligations under this Coverage Form.

4. Concealment, Misrepresentation Or Fraud

This Coverage Form is void in any case of fraud by you at any time as it relates to this Coverage Form. It is also void if you or any other "insured", at any time, intentionally conceals or misrepresents a material fact concerning:

- d. This Coverage Form;
- e. The covered "auto";
- f. Your interest in the covered "auto"; or
- g. A claim under this Coverage Form.

5. Liberalization

If we revise this Coverage Form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

6. No Benefit To Bailee - Physical Damage Coverages

We will not recognize any assignment or grant any coverage for the benefit of any per-

son or organization holding, storing or transporting property for a fee regardless of any other provision of this Coverage Form.

7. Other Insurance

a. For any covered "auto" you own, this Coverage Form provides primary insurance. For any covered "auto" you don't own, the insurance provided by this Coverage Form is excess over any other collectible insurance. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Covered Autos Liability Coverage this Coverage Form provides for the "trailer" is:

- (1) Excess while it is connected to a motor vehicle you do not own; or
- (2) Primary while it is connected to a covered "auto" you own.

b. For Hired Auto Physical Damage Coverage, any covered "auto" you lease, hire, rent or borrow is deemed to be a covered "auto" you own. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

c. Regardless of the provisions of Paragraph a. above, this Coverage Form's Covered Autos Liability Coverage is primary for any liability assumed under an "insured contract".

d. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

8. Premium Audit

a. The estimated premium for this Coverage Form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. The due date for the final premium or retrospective premium is the date shown as the due date on the bill. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.