

**AGREEMENT BETWEEN ALACHUA COUNTY FLORIDA AND ESO SOLUTIONS,
INC. FOR EMS PATIENT CARE SOFTWARE**

This Agreement is entered into this ____ day of _____, 20 between Alachua County, a charter county and political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as "County" or "Customer" and ESO Solutions, Inc, a Texas Corporation, hereinafter referred to as "Professional" or "ESO". Collectively hereinafter County and Professional are referred to as "Parties".

WITNESSETH

WHEREAS, the County has the need to procure the services of a qualified professional to provide EMS Patient Care Software for its Fire Rescue Department; and

WHEREAS, ESO is qualified to provide the desired services to the County: and,

WHEREAS, pursuant to the Alachua County Purchasing Code, the procurement of the services to be provided by ESO to the County are exempt from the County's formal bidding and request for proposal processes, pursuant to section 22.11(44) of the Alachua County Code.

WHEREAS, the County desires to employ ESO to provide the services described in the *Scope of Services* attached hereto as **Exhibit 1** and ESO desires to provide such services to the County in accordance with the terms and conditions set forth herein; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties hereby agree as follows:

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

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

"Addendum" means a writing addressing an order of a specific set of products or services executed by authorized representatives of each party. An Addendum may be (a) a Software Schedule, (b) a Statement of Work, (c) Sales Order, or (d) another writing the parties intend to be incorporated by reference into this Agreement.

"Anonymized Data" means Customer Data from which all personally identifiable information has been removed, as well as the names and addresses of Customer and any of its Users and/or Customer's clients (and which, as a consequence, is neither PHI nor identifiable to or by Customer).

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

"Deliverable" means software, report, or other work product created pursuant to a Statement of

Work.

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

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

“Intellectual Property” means trade secrets, copyrightable subject matter, patents and patent applications, and other proprietary information, activities, and any ideas, concepts, innovations, inventions and designs.

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

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

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

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

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

“Protected Health Information” or **“PHI”** shall have the meaning set forth in HIPAA. All references herein to PHI shall be construed to include electronic PHI, or ePHI, as that term is defined by HIPAA.

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

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

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

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

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

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

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

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

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

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

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

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

2. **Term.** This Agreement is effective on the date executed by both parties and continues for thirty-six (36) months unless earlier terminated as provided herein. This Agreement may be amended at the option of the County for two (2) additional three (3) year terms at the terms and conditions contained in this Agreement.

2.1. The County's performance and obligation to pay under this Agreement is contingent upon a specific annual appropriation by the Board of County Commissioners. The parties hereto understand that this Agreement is not a commitment of future appropriations.

3. **Representations.** By executing this Agreement, ESO makes the following express representations to the County:

3.1. ESO is professionally qualified to perform the desired Services;

3.2. ESO shall maintain all necessary licenses, permits or other authorizations necessary to act as professional for the Project until ESO’s duties hereunder have been fully satisfied;

3.3. ESO has become familiar with the Project site and the local conditions under which the Project is to be designed, constructed, and operated;

3.4. ESO shall prepare all deliverables required by this Agreement including, but not limited to, all contract plans and specifications, in such a manner that they shall be accurate, coordinated, and adequate for the purposes intended and shall be in conformity and comply with all applicable law, codes and regulations;

3.5. ESO represents that the deliverables prepared by ESO are adequate and sufficient to accomplish the purposes of the project and meet the requirements of all applicable federal, state and local codes and regulations.

3.6. ESO acknowledges that the County’s review of the deliverables in no way diminishes ESOs representations pertaining to the deliverables.

3.7. ESO warrants and represents that the Software will materially perform in accordance with the Documentation provided by ESO.

3.8. ESO warrants that its personnel are adequately trained and competent to perform Professional Services and/or Support Services and that each will be performed in a professional manner.

4. **Duties of ESO.** ESO shall have and perform the duties, obligations, and responsibilities outlined within the Scope of Services, Exhibit 1.

5. **Duties of the County.** The County agrees to reasonably and timely cooperate with ESO, including but not limited to providing ESO with reasonable access to its equipment, software, data and using current operating system(s).

5.1. *Support Services* - County will provide at least one administrative employee (the “Administrators”) who will handle all requests for first-level support from County employees with respect to the Software. Such support is intended to be the “front line” for support and information about the Software to County’s Users.

5.2. *Error Priority Levels* - County will report all Errors to Professional via email (support@esosolutions.com) or by telephone (866-766-9471, options #3).

5.3. *Exclusions* - County is solely responsible for its selection of hardware, and Professional shall not be responsible for the performance of such hardware even if Professional makes recommendations regarding the same.

6. **Software schedules.** During the Term of this Agreement, County may order Software from Professional. County’s license to Licensed Software and its subscription to SaaS are set forth below. Each such Software Schedule is outlined within the Scope of Services, **Exhibit 1**.

7. **License/Subscription to Software.**

7.1. **Grant of License.** In the case of Licensed Software, during the Term of this Agreement Professional hereby grant County a limited, non-exclusive, non-transferable, non-assignable, revocable license to copy and use the Licensed Software, in such quantities as are set forth on the applicable Software Schedule and as necessary for Customer’s internal business purposes; provided that, Customer complies with the Restrictions on Use (Section 7.3) and other limitations and obligations contained in this Agreement. Such internal business purposes do not include reproduction or use by any parent, subsidiary, or affiliate of Customer, or any other third party, and Customer shall not permit any such use.

7.2. **Grant of Subscription.** In the case of SaaS, during the term of this Agreement County may access and use the SaaS, in such quantities as are set for the on the applicable Software Schedule; provided that County complies with the Restrictions on Use (Section 7.3) and other limitations contained in this Agreement.

7.3. **Restrictions of Use.** Except as provided in this Agreement or as otherwise authorized by Professional, County has no right to: (a) decompile, reverse engineer, disassemble, print, copy or display the Software or otherwise reduce the Software to a human perceivable form in whole or in part; (b) publish, release, rent, lease, loan, sell, distribute or transfer the Software to another person or entity; (c) reproduce the Software for the use or benefit of anyone other than County; (d) alter, modify or create derivative works based upon the Software either in whole or in part; or use or permit the use of the Software for commercial time-sharing arrangements or providing service bureau, data processing, rental or other services to any third party. The rights granted under the provisions of this Agreement do not constitute a sale of the Software. Professional retains all right, title and interest in and to the Software, including without limitation all software used to provide the Software and

all graphics, user interfaces, logos and trademarks reproduced through the Software, except to the limited extent set forth in this Agreement. This Agreement does not grant County any intellectual property rights in the Software or any of its components, except to the limited extent that this Agreement specifically sets forth County's rights to access, use, or copy the Software during the Term of this Agreement. County recognizes that the Software and its components are protected by copy right and other laws.

- 7.4. **Delivery.** In the case of Licensed Software, Professional shall provide the Licensed Software to County through a reasonable system of electronic download. In the case of SaaS, Professional shall make commercially reasonable efforts to grant County access to SaaS after the Effective Date.
- 7.5. **Third-Party Software.** Software may incorporate software and other technology owned and controlled by third parties. ("Third-Party Software"). Professional is licensed to sublicense and distribute Third-Party Software. All Third-Party Software falls under the scope of this Agreement. Moreover, Professional neither accepts liability, nor warrants the functionality, reliability or accuracy of Third-Party Software, including but not limited to third-party mapping applications.

8. Hosting, SLA & Support Services

- 8.1. **Hosting & Management.** County shall be solely responsible for hosting and managing the Licensed Software. Professional shall be responsible for hosting and managing the SaaS.
- 8.2. **Service Level Agreement.** No credits shall be given in the event Customer's access to SaaS is delayed, impaired or otherwise disrupted (collectively, an "Outage"). If such Outage, excluding Scheduled Downtime (as defined below), results in the service level uptime falling below 99% for three consecutive months or three months in any rolling twelve-month period (collectively, "Uptime Commitment"), then County shall have the option to immediately terminate this Agreement; and Professional shall refund any prepaid, unearned Fees to County. This is County's sole remedy for Professionals breach of the Uptime Commitment.
- 8.3. **Scheduled Downtime.** In the event Professional determines that it is necessary to intentionally interrupt the SaaS or that there is a potential for the SaaS to be interrupted for the performance of system maintenance (collectively, "Scheduled Downtime"), Professional will use good-faith efforts to notify County of such Scheduled Downtime at least 72 hours in advance and will ensure Scheduled Downtime occurs during non-peak hours (midnight to 6 a.m. Eastern Time). In no event shall Schedule Downtime constitute a failure of performance by Professional.
- 8.4. **Support and Updates.** During the Term of this Agreement, Professional shall provide to County the Support Services, in accordance with the Scope of Services, **Exhibit 1**.
- 8.5. **Data Backup.** ESO and/or ESO's data hosting provider shall regularly backup Customer Data to an appropriate and reliable storage media.

9. **Method of Payment.** For its assumption and performance of the duties, obligations, and responsibilities set forth herein, ESO shall be paid in accordance with this section.
- 9.1. ESO shall be paid for those services required by this Agreement not to exceed the sum of Sixty-Six Thousand Two Hundred Twenty-Two Dollars and Zero Cents (\$66,222.00) allocated as outlined in the Scope of Services, **Exhibit 1**.
- 9.2. Reimbursable expenses, if approved in writing in advance, will be paid by the County to ESO for the following services or costs outlined below. ESO will invoice for reimbursable services or costs annually and in advance. Amounts invoiced for reimbursement shall include back-up documentation.
- 9.2.1. Expenses for travel when traveling in connection with provision of services under this Agreement in accordance with the provisions of §112.061(7) and (8), Florida Statutes, or their successor and with the prior approval of the County.
- 9.2.2. Actual expense of reproductions, postage and handling of drawings and specifications postage-actual cost;
- 9.2.3. If authorized in writing in advance by the County's representative, the cost of other expenditures made in the interest of the work effort.
- 9.3. If ESO's duties, obligations, and responsibilities are materially changed through no fault of ESO after execution of this Agreement, additional compensation shall be paid as provided in the Scope of Services, **Exhibit 1**.
- 9.4. As a condition precedent for any payment, ESO shall submit annually in advance, unless otherwise agreed in writing by the Parties, an invoice to the County requesting payment for services properly rendered and expenses due. ESO's invoice shall describe with reasonable particularity the products and services subscribed to by Customer, as further detailed in Exhibit 1. ESO's invoice shall be accompanied by such documentation or data in support of expenses for which payment is sought as the County may require. If payment is requested for services rendered by Professional, the invoice shall additionally reflect the allocations as provided and shall state the percentage of completion as to each such allocation. Each invoice shall constitute ESO's representation to the County that the services indicated in the invoice have reached the level stated, have served a public purpose, have been properly and timely performed as required herein, that the expenses included in the invoice have been reasonably incurred in accordance with this Agreement, that all obligations of ESO covered by prior invoices have been paid in full, and that the amount requested is currently due and owing, there being no reason known to ESO that payment of any portion thereof should be withheld. Submission of ESO's invoice for final payment shall further constitute ESO's representation to the County that, upon receipt by ESO of the amount invoiced, all obligations of ESO to others, including its consultants, incurred in connection with the Project, will be paid in full. ESO shall submit invoices to the County at the following address:

Alachua County Fire Rescue
PO Box 5038
Gainesville, FL 32627-5038

Email: ACFRFiscal@alachuacounty.us

- 9.5. In the event that the County becomes credibly informed that any representations of ESO relating to payment are wholly or partially inaccurate, the County may withhold payment of sums then or in the future otherwise due to ESO until the inaccuracy, and the cause thereof, is corrected to the County's reasonable satisfaction.
- 9.6. Uplift on Renewal. Except in the instance of Overages (as defined below), Fees for Software, which recur annually, shall increase by three percent (3%) each year this Agreement is in effect, beginning October 1, 2020.
- 9.7. Monitoring Rights. ESO may regularly monitor County's usage of the Software and charge County increased Fees in accordance with Scope of Services, **Exhibit 1**, to this Agreement if County's usage has increased beyond the quantity contracted for in the current Software Schedule (for example, Customer is uploading more records into the Software than it has previously contracted for) (collectively, "Overages"). Provided, however, that ESOs invoice for Overages shall only be invoiced along with the issuance of the County's next scheduled invoice, and that ESO shall provide written notice of said Overages prior to October 30th of that year to go into effect October 1 of the following year. In no event shall Overages be invoiced retroactively.
- 9.8. The County shall make payment to ESO, of all sums properly invoiced under the provisions of this paragraph, in accordance with the provisions of Chapter 218, Part VII (Local Government Prompt Payment Act), Florida Statutes. Payments shall be made to the following address:
- ESO Solutions, Inc.
PO BOX 670324
Dallas, TX 75267
ATTN: Accounts Receivable
10. **Notice.** Except as otherwise provided in this Agreement any notice of default or termination from either party to the other party must be in writing and sent by certified mail, return receipt requested, or by personal delivery with receipt. All notices shall be deemed delivered two (2) business days after mailing, unless deliver is by personal delivery in which case delivery shall be deemed to occur upon actual receipt by the other party. For purposes of all notices, Contractor's and County representative are:

County:
Alachua County Fire Rescue
Harold Theus, Chief
PO Box 5038
Gainesville, FL 32627-5038

Professional:
ESO Solutions, Inc
ATTN: Legal Department

11500 Alterra Parkway, STE 100
Austin, Texas 78758

A copy of any notice, request or approval to the County must also be sent to:

J.K. "Jess" Irby, Esq
Clerk of the Court
12 SE 1st Street
Gainesville, FL 32602
Attn: Finance and Accounting

And to

Procurement Division
12 SE 1st Street
Gainesville, Florida 32601
Attn: Contracts

11. Default and Termination.

- 11.1. The failure of ESO to comply with any provision of this Agreement will place ESO in default. Prior to terminating the Agreement, the County will notify ESO in writing. This notification will make specific reference to the provision which gave rise to the default. The County will give ESO thirty (30) days to cure the default. The County Manager is authorized to provide written notice of default on behalf of the County, and if the default situation is not corrected within the allotted time the County Manager is authorized to provide final termination notice on behalf of the County to ESO.
- 11.2. Either Party may also terminate the Agreement without cause by providing thirty (30) days written notice to the other Party. The County Manager is authorized to provide written notice of termination on behalf of the County. Upon such notice, Professional will immediately discontinue all services affected (unless the notice directs otherwise); and, deliver to the County all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by ESO in performing this Agreement, whether completed or in process. County shall cease use of the Software and delete, destroy or return all copies of the Documentation and Licensed Software in its possession or control, except as required by law. In the event of such termination for convenience, Professional recovery against County shall be limited to that portion of the Agreement amount earned through the date of termination, but Professional shall not be entitled to any other or further recovery against County, including, but not limited to, damages, consequential or special damages, or any anticipated fees or profit on portions of the work not performed.
- 11.3. If funds to finance this Agreement become unavailable, the County may terminate the Agreement with no less than five (5) business days' notice in writing to ESO. The County will be the final authority as to the availability of funds. The County will pay ESO for all work completed prior to any notice of termination.
- 11.4. Upon termination of this Agreement or any Software Schedule, County shall remain obligated to pay appropriate Fees at Professional's then-current rates if County continues

to use or access Software after the termination or expiration of this Agreement. If Customer received discounts for any of the two years prior to the date of termination, Customer shall promptly pay Professional's invoice recouping such discounts.

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

12. Project Records.

12.1. General Provisions:

- 12.1.1. Any document submitted to the County may be a public record and is open for inspection or copying by any person or entity. "Public records" are defined as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency per §119.011(12), Florida Statutes. Any document is subject to inspection and copying unless exempted under Chapter 119, Florida Statutes, or as otherwise provided by law.
- 12.1.2. In accordance with §119.0701, Florida Statutes, ESO (referred hereinafter in all of the "Project Records" section collectively as "Professional"), *when acting on behalf of the County*, as provided under 119.011(2), Florida Statutes, shall keep and maintain public records as required by law and retain them as provided by the General Record Schedule established by the Department of State. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time unless exempted under Chapter 119, Florida Statutes, or as otherwise provided by law. Additionally, ESO or Contractor shall provide the public records at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- 12.1.3. ESO shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if ESO does not transfer the records to the County.

12.2. Confidential Information:

- 12.2.1. During the term of this Agreement or license, ESO may claim that some or all of Professional's information, including, but not limited to, software documentation, manuals, written methodologies and processes, pricing, discounts, or other considerations (hereafter collectively referred to as "Confidential Information"), is, or has been treated as confidential and proprietary by Professional in accordance with §812.081, Florida Statutes, or other law, and is exempt from disclosure under the Public Record Act. Professional shall clearly identify and mark Confidential Information as "Confidential Information" or "CI" and the County shall use reasonable efforts to maintain the confidentiality of the information properly

identified by ESO as “Confidential Information” or “CI.”

12.2.2. The County shall promptly notify ESO in writing of any request received by the County for disclosure of Professional’s Confidential Information and ESO may assert any exemption from disclosure available under applicable law or seek a protective order against disclosure from a court of competent jurisdiction. Notwithstanding anything to the contrary in this Section 12, ESO’s indemnification obligations herein shall be governed and limited by Section 18, “Limitation of Liability.”

12.3. **Project Completion:** Upon completion of, or in the event this Agreement is terminated, ESO, *when acting on behalf of the County* as provided under §119.011(2), Florida Statutes, shall transfer, at no cost, to the County all public records in possession of ESO or keep and maintain public records required by the County to perform the service. If ESO transfers all public records to the County upon completion or termination of the agreement, it must destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If ESO keeps and maintains public records upon the completion or termination of the agreement all applicable requirements for retaining public records shall be met. All records stored electronically shall be provided to the County, upon request from the Counties custodian of public records, in a format that is compatible with the information technology systems of the County.

12.4. **Compliance:** ESO may be subject to penalties under §119.10, Florida Statutes, if the Professional fails to provide the public records to the County within a reasonable time.

13. Medical Records and HIPAA: Professional and the County shall comply with any prohibitions, restrictions, limitations, conditions, or other requirements to the extent applicable pursuant to the Health Insurance Portability and Accountability Act (HIPAA) and its implementing regulation concerning privacy of individual identifiable health information as set forth in 45 CFR, Parts 160-164, as amended from time to time. As an addendum to this Agreement with the County, Professional enters the HIPAA Business Associate Agreement, **Exhibit 2**, attached hereto and incorporated into this Agreement.

14. Insurance. ESO will procure and maintain insurance throughout the entire term of this Agreement of the types and in the minimum amounts detailed in **Exhibit 3**. A copy of a current Certificate of Insurance (COI) showing coverage of the type and in the amounts required is attached hereto as **Exhibit 3-A**.

15. Permits. Parties will obtain and pay for all necessary permits, permit application fees, licenses or any fees required, respective of their responsibilities in carrying out the Agreement.

16. Laws & Regulations. Parties will comply with all laws, ordinances, regulations, and building code requirements applicable to the work required by this Agreement. ESO is presumed to be familiar with all state and local laws, ordinances, code rules and regulations that may in any way affect the work outlined in this Agreement. If ESO is not familiar with state and local laws, ordinances, code rules and regulations, ESO remains liable for any violation and all subsequent damages or fines.

17. Indemnification

ESO shall defend and indemnify Customer from any damages, costs, liabilities, expenses (including reasonable attorney's fees) ("Damages") actually incurred or finally adjudicated as to any third-party claim or action alleging that the Software delivered pursuant to this Agreement infringe or misappropriate any third party's patent, copyright, trade secret, or other intellectual property rights enforceable in the applicable jurisdiction (each, an "Indemnified Claim"). If Customer makes an Indemnified Claim under this Section or if ESO determines that an Indemnified Claim may occur, ESO shall at its option: (a) obtain a right for Customer to continue using such Software; (b) modify such Software to make it a non-infringing equivalent or (c) replace such Software with a non-infringing equivalent. If (a), (b), or (c) above are not reasonably practicable, either party may, at its option, terminate the relevant Software Schedule, in which case ESO will refund any pre-paid Fees on a pro-rata basis for such Software Schedule. Notwithstanding the foregoing, ESO shall have no obligation hereunder for any claim resulting or arising from (x) Customer's breach of this Agreement; (y) modifications made to the Software that were not performed or provided by or on behalf of ESO or (z) the combination, operation or use by Customer (and/or anyone acting on Customer's behalf) of the Software in connection with any other product or service (the combination or joint use of which causes the alleged infringement). This Section 17 states ESO's sole obligation and liability, and Customer's sole remedy, for potential or actual intellectual property infringement by the Software. This obligation shall in no way be limited in any nature whatsoever by any limitation on the amount or type of Professional's insurance coverage. This indemnification provision shall survive the termination of the Agreement between the County and ESO. Nothing contained herein shall constitute a waiver by the County of sovereign immunity or the provisions or limitation of liability of §768.28, Florida Statutes.

18. Limitation of Liability

- 18.1. **Limitation of Damages.** Neither ESO nor customer shall be liable to the other for any consequential, indirect, special, punitive or incidental damages, including claims for damages for lost profits, goodwill, use of money, interrupted or impaired use of the software, availability of data, stoppage of work or impairment of other assets relating to this agreement.
- 18.2. **Limitation of Liability.** With the exception of section 18.3 (exceptions to the limitation of liability), ESO's maximum aggregate liability for all claims of liability arising out of or in connection with this agreement, shall not exceed the fees paid by (or on behalf of) customer within the preceding 12-month period under the applicable software schedule or sow giving rise to the claim.
- 18.3. **Exceptions to Limitation of Liability.** Notwithstanding section 18.2, (a) ESO's liability for claims involving its indemnification obligations under sections 12 and 17 shall be limited to \$500,000, and (b) ESO's liability shall be limited to the amount of insurance coverage required by exhibit 3 for the following types of claims: (i) claims arising from ESO's willful misconduct or criminal conduct; and (ii) claims arising from a breach of confidentiality obligations, including a breach of obligations regarding protected health information.
- 18.4. The foregoing limitations, exclusions, disclaimers shall apply regardless of whether the claim for such damages is based in contract, warranty, strict liability, negligence, tort or otherwise. Insofar as applicable law prohibits any limitation herein, the parties agree that such limitation shall be automatically modified, but only to the extent so as to make the limitation permitted to the fullest extent possible under such law. The parties agree that the limitations set forth herein are agreed allocations of risk constituting in part the consideration for ESO's software and services to customer, and such limitations will apply notwithstanding the failure of the essential purposes of any limited remedy and even if a party has been advised of the possibility of such liabilities.
- 18.5. This section 18 shall survive expiration or termination of the agreement.

19. Standard of Care. The services of ESO shall be performed with the skill and care which would be exercised by a qualified professional performing similar services at the time and place such services are performed. If the failure to meet these standards results in deficiencies in the substandard architectural or engineering design, ESO shall furnish, at his own cost and expense, the redesign necessary to correct such deficiencies, and shall be responsible for any and all consequential damages arising from those deficiencies.

20. Assignment of Interest. Neither party will assign or transfer any interest in this Agreement without prior written consent of the other party. Except that either Party may, with prior written consent of the other, assign all its rights under this Agreement to (i) a purchaser of all or substantially all assets related to this Agreement, or (ii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which either party is participating (collectively, a "Change in Control"): provided however, that the non-assigning party is given notice of the Change in Control.

21. Successors and Assigns. The County and ESO each bind the other and their respective

successors and assigns in all respects to all of the terms, conditions, covenants, and provisions of this Agreement.

- 22. Independent Professional or Consultant.** In the performance of this Agreement, ESO is acting in the capacity of an independent Professional or Consultant and not as an agent, employee, partner, joint venturer, or associate of the County. ESO is solely responsible for the means, method, technique, sequence, and procedure utilized by ESO in the full performance of the Agreement.
- 23. Collusion.** By signing this Agreement, ESO declares that this Agreement is made without any previous understanding, Agreement, or connections with any persons, professionals or corporations and that this Agreement is fair, and made in good faith without any outside control, collusion, or fraud.
- 24. Conflict of Interest.** ESO warrants that neither it, nor any of its employees, have any financial or personal interest that conflicts with the execution of this Agreement. ESO shall notify the County of any conflict of interest due to any other clients, contracts, or property interests.
- 25. Prohibition Against Contingent Fees.** As required by §287.055(6), Florida Statutes, ESO warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for ESO to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for ESO any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.
- 26. Third Party Beneficiaries.** This Agreement does not create any relationship with, or any rights in favor of, any third party.
- 27. Severability.** If any provision of this Agreement is declared void by a court of law, all other provisions will remain in full force and effect
- 28. Non Waiver.** The failure of any party to exercise any right in this Agreement shall not be considered a waiver of such right.
- 29. Governing Law and Venue.** The laws of the State of Florida shall govern this Agreement and the duties and obligations stated within this Agreement. The Parties agree that any Dispute shall be brought exclusively in the state or federal courts of appropriate jurisdiction in the State of Florida. The parties agree to submit to the personal jurisdiction of such courts.
- 30. Attachments.** All exhibits attached to this Agreement are incorporated into and made part of this Agreement by reference.
- 31. Amendments.** The parties may amend this Agreement only by mutual written agreement of the parties.
- 32. Captions and Section Headings.** Captions and section headings used herein are for convenience only and shall not be used in construing this Agreement.

- 33. Order of Precedence.** In the event of any conflict between this Agreement, Addenda or other attachments incorporated herein, the following order of precedence will govern: (1) the General Terms and Conditions; (2) any Business Associate Agreement; (3) the applicable Software Schedule or SOW, with most recent Software Schedule or SOW taking precedence over earlier ones; and (4) any ESO policy posted online, including without limitation its privacy policy. No amendments incorporated into this Agreement after execution of the General Terms and Conditions will amend such General Terms and Conditions unless it specifically states its intent to do so and cites the section or sections amended.
- 34. Counterparts.** This Agreement may be executed in any number of and by the different parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument. Receipt via fax or email with pdf attachment by a party or its designated legal counsel of an executed counterpart of this Amendment shall constitute valid and sufficient delivery in order to complete execution and delivery of this Amendment and bind the parties to the terms hereof.
- 35. Construction.** This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by one of the parties. It is recognized that both parties have substantially contributed to the preparation of this Agreement.
- 36. Entire Agreement.** This Agreement constitutes the entire Agreement and supersedes all prior written or oral agreements, understandings, or representations.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed for the uses and purposes therein expressed on the day and year first above-written.

ALACHUA COUNTY, FLORIDA

By: _____
_____, Chair
Board of County Commissioners
Date: _____

ATTEST:

APPROVED AS TO FORM

J.K. "Jess" Irby, Esq., Clerk

(SEAL)

Alachua County Attorney's Office

PROFESSIONAL

ATTEST (By Corporate Officer)
By: _____
Print: Matt Walker
Title: COO

By: _____
Print: Robert Murchio
Title: General Counsel & Secretary
Date: 8/20/19

EXHIBIT 1: SCOPE OF SERVICES

1. **Definitions:** Capitalized terms not defined below shall have the same meaning as in the General Terms & Conditions.
 - 1.1. “Enhancement” means a modification, addition or new release of the Software that when added to the Software, materially changes its utility, efficiency, functional capability or application.
 - 1.2. “E-mail Support” means ability to make requests for technical support assistance by e-mail at any time concerning the use of the then-current release of Software.
 - 1.3. “Error” means an error in the Software, which significantly degrades performance of such Software as compared to Professionals then-published Documentation.
 - 1.4. “Error Correction” means the use of reasonable commercial efforts to correct Errors.
 - 1.5. “Fix” means the repair or replacement of object code for the Software or Documentation to remedy an Error.
 - 1.6. “Initial Response” means the first contact by a Support Representative after the incident has been logged and a ticket generated. This may include an automated email response depending on when the incident is first communicated.
 - 1.7. “Management Escalation” means, if the initial Workaround or Fix does not resolve the Error, notification of management that such Error(s) have been reported and of steps being taken to correct such Error(s).
 - 1.8. “Severity 1 Error” means an Error which renders the Software completely inoperative (e.g. a User cannot access the Software due to unscheduled downtime or an Outage).
 - 1.9. “Severity 2 Error” means an Error in which Software is still operable; however, one or more significant features or functionality are unavailable (e.g. a User cannot access a core component of the Software).
 - 1.10. “Severity 3 Error” means any other error that does not prevent a User from accessing a significant feature of the Software (e.g. User is experiencing latency in reports).
 - 1.11. “Severity 4 Error” means any error related to Documentation or a Customer Enhancement request.
 - 1.12. “Status Update” means if the initial Workaround or Fix cannot resolve the Error, notification of the Customer regarding the progress of the Workaround or Fix.

- 1.13. "Online Support" means information available through Professional's website (www.esosolutions.com), including frequently asked questions and bug reporting via Live Chat.
- 1.14. "Support Representative" shall be Professionals employee(s) or agent(s) designated to receive Error notifications from Customer, which Customer's Administrator has been unable to resolve.
- 1.15. "Update" means an update or revision to Software, typically for Error Correction.
- 1.16. "Upgrade" means a new version or release of Software or a particular component of Software, which improves the functionality or which adds functional capabilities to the Software and is not included in an Update. Upgrades may include Enhancements.
- 1.17. "Workaround: means a change in the procedures followed or data supplied by County to avoid an Error without substantially impairing Customer's use of the Software.

2. Support Services

- 2.1. County will provide at least one (1) administrative position (the "Administrator" of "Administrators") who will handle all requests for first-level support from Customer's employees with respect to the Software. Such support is intended to be the "front line" for support and information about the Software to Customer's Users. Professional will provide training, documentation, and materials to the Administrator to enable the Administrator to provide technical support to County's Users. The Administrator will notify a Support Representative of any Errors that the Administrator cannot resolve and assist ESO in information gathering.
- 2.2. Professional will provide Support Services consisting of (a) Error Corrections(s): Enhancements, Updates and Upgrades that Professional, in its discretion, makes generally available to its customers without additional charge; and (c) E-mail Support, telephone support, and Online Support. Professional may use multiple forms of communication for purposes of submitting periodic status reports to County, including but not limited to, messages in the Software, messages appearing upon login to the Software or other means of broadcasting Status Update(s) to multiple customers affected by the same Error, such as a customer portal.
- 2.3. Professionals support desk will be staffed with competent technical consultants who are trained in and thoroughly familiar with the Software and with Customer's applicable configuration. Telephone support and all communications will be delivered in intelligible English.
- 2.4. Normal business hours for Professional support desk are Monday through Friday 7:00am to 7:00pm CT. County will receive a call back from a Support Representative after- hours for a Severity 1 Error.

3. **Error Priority Levels.** Professional shall exercise commercially reasonable efforts to correct any Error reported by County in accordance with the priority level reasonably assigned to such Error by Professional.
 - 3.1. Severity 1 Error. Professional shall (i) commence Error Correction promptly; (ii) provide an Initial Response within four hours; (iii) initiate Management Escalation promptly; and (iv) provide County with a Status Update within four hours if Professional cannot resolve the Error within four hours.
 - 3.2. Severity 2 Error. Professional shall (i) commence Error Correction promptly; (ii) provide an Initial Response within eight hours; (iii) initiate Management Escalation within forty-eight hours if unresolved; and (iv) provide Customer with a Status Update within forty-eight hours if Professional cannot resolve the Error within forty-eight hours.
 - 3.3. Severity 3 Error. Professional shall (i) commence Error Correction promptly; (ii) provide an Initial Response within three business days; and (iii) provide Customer with a Status Update within seven calendar days if Professional cannot resolve the Error within seven calendar days.
 - 3.4. Severity 4 Error. Professional shall (i) provide an Initial Response within seven calendar days.
4. **Consulting Services.** If Professional reasonably believes that a problem reported by County is not due to an Error in the Software, Professional will so notify County. At that time, County may request Professional to proceed with a root cause analysis at County's expense as set forth herein or in a separate Statement of Work. If Professional agrees to perform the investigation on behalf of County, then Professional's then-current and standard consulting rates will apply for all work performed in connection with such analysis, plus reasonable related expenses incurred. For the avoidance of doubt, Consulting Services will include customized report writing by Professional on behalf of County.
5. **Exclusions.**
 - 5.1. Professional shall have no obligation to perform Error Corrections or otherwise provide support for: (i) Customer's repairs, maintenance or modifications to the Software (if permitted); (ii) Customer's misapplication or unauthorized use of the Software; (iii) altered or damaged Software not caused by Professional; (iv) any third-party software; (v) hardware issues; (vi) County's breach of the Agreement; and (vii) any other causes beyond ESO's control.
 - 5.2. Professional shall have no liability for any changes in County's hardware or software systems that may be necessary to use the Software due to a Workaround or Fix.
 - 5.3. Professional is not responsible for any Error Correction unless Professional can replicate such Error on its own software and hardware or through remote access to County's

software and hardware.

6. **Updates.** The parties acknowledge that from time-to-time Professional may update its support processes specifically addressed in this Exhibit and may do so by posting such updates to Professional's website or otherwise notifying County of such updates. County will accept updates to Professional's support procedures and any other terms in the Exhibit; provided however, that they do not materially decrease the level of Support Services that County will receive from Professional.
7. **Subscription Term.** The SaaS subscription term shall begin 15 calendar days after the Effective Date ("SaaS Subscription Start Date"). County shall be deemed to have accepted the SaaS on the SaaS Subscription Start Date. The parties will make reasonable efforts to ensure that County is able to use the SaaS as contemplated as quickly as possible, but in no event will the SaaS Subscription Start Date be modified for implementation delays.
8. **Price Schedule.**
 - 8.1. During the first year, 100% of the remaining Fees shall be invoiced on the SaaS Subscription Start Date.
 - 8.2. During the second year and any renewal years thereafter, 100% of the recurring Fees shall be due on the anniversary of the SaaS Subscription Start Date.
 - 8.3. Product fees agreed upon for this agreement are as follows:

Product Name	Product Description	Quantity	Total Price/ Discounts
EHR Suite w/ QM & Mobile	Includes Quality Management, Ad Hoc Reports, Analytics, Patient Tracker. Allows for unlimited users, unlimited mobile applications, live support, state and federal data reporting, ongoing weekly web training, software updates and upgrades. Fee Type: Recurring	42000 /Calls	\$50,990.00
<i>EHR Suite w/ QM & Mobile Discount</i>	 Fee Type: Recurring		(\$5,099.00)
CAD Integration	Allows for integration of CAD data into EHR mobile and web application. Ongoing maintenance included. Additional fees from your CAD vendor may apply. Fee Type: Recurring	42000 /Incidents	\$3,995.00
<i>CAD Integration Discount</i>	 Fee Type: Recurring		(\$ 399.50)
Cardiac Monitor	Unlimited cardiac monitors, allows for import of cardiac monitor data via local or cloud integration. Ongoing maintenance included. Fee Type: Recurring	42000 /Incidents	\$1,895.00
<i>Cardiac Monitor Discount</i>	 Fee Type: Recurring		(\$ 189.50)
EHR Billing Standard Interface	Allows for integration of discrete ePCR data into third-party billing software. Ongoing maintenance included. Fee Type: Recurring	42000 /Incidents	\$ 995.00
<i>EHR Billing Standard Interface Discount</i>	 Fee Type: Recurring		(\$ 995.00)
EHR Training	Daily Rate Fee Type: One-Time	3 /Day	\$2,985.00
EHR Training Travel Costs	One-time fee - covers all travel costs associated with on-site training option. Fee Type: One-Time	1500 /Travel Cost	\$1,500.00
HDE - ESO EHR Connection	Bi-directional connection for an ESO EHR customer for HDE Fee Type: Recurring	1 /Incidents	\$ 495.00
<i>HDE - ESO EHR Connection Discount</i>	 Fee Type: Recurring		(\$ 49.50)
Fire Incidents - Career FD - 1st Station	Includes mobile application NFIRS widget, Auto EHR-import or Auto-CAD import, federal NFIRS data reporting, software updates and upgrades. Fee Type: Recurring	1 /Stations	\$1,295.00
<i>Fire Incidents - Career FD - 1st Station - Discount</i>	 Fee Type: Recurring		(\$ 129.50)

Fire Properties - Career FD - 1st Station	Initial station subscription for Properties – the data collection application for Properties & Occupancies – includes CAMEO integration, Pre-Plan view, and stores property and occupant history (presence of chemicals & tanks, incidents, and previous inspec Fee Type: Recurring	1 /Stations	\$ 495.00
Fire Properties - Career FD - 1st Station - Discount	Fee Type: Recurring		(\$ 49.50)
Fire Incidents - Career - Additional Stations	Includes mobile application NFIRS widget, Auto EHR-import or Auto-CAD import, federal NFIRS data reporting, software updates and upgrades. Fee Type: Recurring	7 /Stations	\$6,825.00
Fire Incidents - Career - Additional Stations - Discount	Fee Type: Recurring		(\$ 682.50)
Fire Inspections - Career - Additional Stations	Additional station subscription for ESO's Inspections Application for Career Fire Departments. Fee Type: Recurring	7 /Stations	\$2,975.00
Fire Inspections - Career - Additional Stations - Discount	Fee Type: Recurring		(\$ 297.50)
Fire Inspections - Career FD - 1st Station	Initial station subscription for Inspections – includes the ability to manage multiple code sets, using those to developed customized Check-lists for inspections. The application allows you to schedule, manage, execute and finalize inspections – as well Fee Type: Recurring	1 /Stations	\$ 595.00
Fire Inspections - Career FD - 1st Station - Discount	Fee Type: Recurring		(\$ 59.50)
Fire Properties - Career - Additional Stations	Additional station subscription for ESO's Properties Application for Career Fire Departments. Fee Type: Recurring	7 /Stations	\$2,625.00
Fire Properties - Career - Additional Stations - Discount	Fee Type: Recurring		(\$ 262.50)
Telestaff Integration	Fee Type: Recurring	1 /Incidents	\$1,395.00
Telestaff Integration Discount	Fee Type: Recurring		(\$ 139.50)

List Price: \$70,060.00
Discounts: (\$8,353.00)
Tax: \$0.00
Total: \$70,707.00

THESE TERMS AND CONDITIONS DO NOT CONSTITUTE A PRODUCT WARRANTY. THIS EXHIBIT IS AN ADDITIONAL PART OF THE AGREEMENT AND DOES NOT CHANGE OR SUPERSEDE ANY TERM OF THE AGREEMENT EXCEPT TO THE EXTENT UNAMBIGUOUSLY CONTRARY THERETO.

EXHIBIT 2: HIPAA BUSINESS ASSOCIATE AGREEMENT

BUSINESS ASSOCIATE AGREEMENT

THIS **BUSINESS ASSOCIATE AGREEMENT** (this "Agreement") is entered into, and effective as of _____, 20 (the "Effective Date") by and between Alachua County ("Alachua County" or "Covered Entity") and ESO SOLUTIONS, INC. ("Business Associate"). The parties to this Agreement if not referred to as Covered Entity or Alachua County or BUSINESS ASSOCIATE or Business Associate may sometimes collectively be referred to "the Parties." The Parties mutually agree as follows:

INTRODUCTION

The purpose of this Agreement is to comply with the requirements of (i) the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the associated regulations, as may be amended; (ii) the HIPAA Privacy Rule codified at, 45 C.F.R. Parts 160 and 164, Subparts A and E, as may be amended; (iii) the HIPAA Security Rule codified at 45 C.F.R. Part 160 and 164, Subpart C, as may be amended; (iv) the Breach Notification Rule, codified at 45 C.F.R. Part 164, Subpart D, as may be amended; (v) the Enforcement Rule codified at 45 C.F.R. Part 160, Subparts C and D, as may be amended; (vi) the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009 (the "HITECH Act"); and (vii) the HIPAA Omnibus Final Rule published in the Federal Register at 78 Fed. Reg. 5,566 (Jan. 25, 2013), and effective on March 26, 2013. The HITECH Act provides further protection for the privacy and security of PHI used and disclosed through health information technology. The Privacy, Security, Breach Notification and Enforcement Rules are collectively referred to herein as the "HIPAA Rules." Unless otherwise defined in this Agreement, capitalized terms have the meanings given in the HIPAA Rules and the HITECH Act.

In consideration of the new and continuing obligations under the Services Agreement referenced below and other good and valuable consideration, the parties agree to comply with this Agreement and the requirements of the HIPAA Rules and the HITECH Act as follows:

1. **Services.** Alachua County and Business Associate have entered into an agreement under which Business Associate will perform certain services for Alachua County ("the Services Agreement") Under the Services Agreement, Business Associate may create, receive, use, maintain or transmit PHI from or on behalf of Covered Entity in the course of providing certain services (the "Services") for Covered Entity. The Services Agreement is incorporated herein by reference. In the event of a conflict between the terms of the Services Agreement and this Agreement, Section 33 "Order of Precedence" of the Services Agreement shall govern.
2. **Permitted Uses and Disclosures.** Business Associate may use and/or disclose PHI only as permitted or required by this Agreement, or as otherwise required by law. Business

Associate may disclose PHI to, and permit the use of PHI by, its employees, contractors, agents, or other representatives only to the extent directly related to and necessary for the performance of Services under the Services Agreement. Business Associate shall make uses and disclosures, and requests for PHI from Covered Entity, only in a manner consistent with HIPAA's minimum necessary requirements, and no more than the minimum PHI necessary to perform under the Services Agreement. Business Associate shall not use or disclose PHI in a manner (i) inconsistent with Covered Entity's obligations under the HIPAA Rules or the HITECH Act, or (ii) that would violate the HIPAA Rules or the HITECH Act if disclosed or used in such a manner by Covered Entity. Business Associate may use PHI for the proper management and administration of Business Associate's business and to carry out its responsibilities in accordance with 45 C.F.R. § 164.504(e)(4). Business Associate aggregate and de-identify PHI and/or create limited data sets for use in research, evaluation and for publication or presentation of patient care quality improvement practices and outcomes. The Parties understand and agree that such aggregated and de-identified data is no longer PHI subject to the provisions of HIPAA and agree that Business Associate may retain such limited data sets indefinitely thereafter. Business Associate agrees that it will comply with all terms of this Agreement with respect to the limited data sets and that it shall not re-identify or attempt to re-identify the information contained in the limited data set, nor contact any of the individuals whose information is contained in the limited data set.. Business Associate shall make no use or disclosure of PHI in any manner which is contrary to the interest of Alachua County or will cause BUSINESS ASSOCIATE harm.

3. **Safeguards for the Protection of PHI.** Business Associate shall conduct an accurate and thorough risk assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of Electronic PHI held by Covered Entity. Business Associate shall comply with the HIPAA Security Rule codified at 45 C.F.R. Part 160 and 164, Subpart C, as may be amended, and with the applicable provisions of the HIPAA Privacy Rule codified at 45 C.F.R. Parts 160 and 164, Subparts A and E, as may be amended, to the extent Business Associate is to carry out any of Covered Entity's obligations under the Privacy Rule. It shall be the responsibility of Business Associate to provide a product and services which comply with the HIPAA standards, including privacy, security and those contained in the HITECH amendments.
4. **Reporting and Mitigating the Effect of Unauthorized Uses and Disclosures.** If Business Associate has knowledge of any use or disclosure of PHI not provided for by this Agreement, then Business Associate shall promptly notify Covered Entity in accordance with Section 12. Business Associate shall establish and implement procedures and other reasonable efforts for mitigating, to the extent possible, any harmful effects arising from any improper use and/or disclosure of PHI of which it becomes aware. Furthermore, in the event Business Associate becomes aware of a Security Incident involving PHI, by itself or any of its agents or subcontractors, Business Associate shall notify Covered Entity in writing within ten (10) calendar days, of such Security Incident. Business Associate shall identify the: (i) date of the Security Incident; (ii) scope of the Security Incident; (iii) Business Associate's response to the Security Incident; and (iv) identification of the party responsible for the Security Incident, if known. Covered Entity and Business Associate agree to act together in good faith to take reasonable steps to investigate and mitigate any harm caused by such unauthorized use or Security Incident. For these purposes, a "Security

Incident" shall mean the successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.

5. **Data Breach Notification and Mitigation.** Business Associate agrees to promptly notify Covered Entity of any "Breach" of "Unsecured PHI" as those terms are defined by 45 C.F.R. §164.402 (hereinafter a "Data Breach"). The Parties acknowledge and agree that 45 C.F.R. §164.404, as described below in this Section, governs the determination of the date of a Data Breach. Business Associate shall be responsible for, at its own cost and expense, preventing and mitigating Data Breaches caused or contributed to by its product. Business Associate shall, following the discovery of a Data Breach, promptly notify Covered Entity and in no event later than five (5) business days after Business Associate discovers such Data Breach, unless Business Associate is prevented from doing so by 45 C.F.R. §164.412 concerning law enforcement investigations. For purposes of reporting a Data Breach to Covered Entity, the discovery of a Data Breach shall occur as of the first day on which such Data Breach is known to Business Associate or, by exercising reasonable diligence, would have been known to Business Associate. Business Associate shall be considered to have had knowledge of a Data Breach if the Data Breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the Data Breach) who is an employee, officer or other agent of Business Associate. No later than five (5) business days following a Data Breach, Business Associate shall provide Covered Entity with sufficient information to permit Covered Entity to comply with the Data Breach notification requirements set forth at 45 C.F.R. §164.400 et seq. Specifically, if the following information is known to (or can be reasonably obtained by) Business Associate, Business Associate shall provide Covered Entity with: (i) contact information for Individuals who were or who may have been impacted by the Data Breach (e.g., first and last name, mailing address, street address, phone number, email address); (ii) a brief description of the circumstances of the Data Breach, including the date of the Data Breach, date of discovery, and number of Individuals affected by the Data Breach; (iii) a description of the types of unsecured PHI involved in the Data Breach (e.g., names, social security number, date of birth, address(es), account numbers of any type, disability codes, diagnosis and/or billing codes and similar information); (iv) a brief description of what the Business Associate has done or is doing to investigate the Data Breach, mitigate harm to the Individual impacted by the Data Breach, and protect against future Data Breaches; and (v) appoint a liaison and provide contact information for same so that the Covered Entity may ask questions and/or learn additional information concerning the Data Breach. Following a Data Breach, Business Associate shall have a continuing duty to inform Covered Entity of new information learned by Business Associate regarding the Data Breach, including but not limited to the information described in the items above.

6. **Use and Disclosure of PHI by Subcontractors, Agents, and Representatives.** Business Associate shall require any subcontractor, agent, or other representative that is authorized to create, receive, maintain, or transmit PHI on behalf of Business Associate to execute a business associate agreement to agree in writing to the same terms set forth herein. Business Associate shall terminate its business associate agreement with any subcontractor, agent or other representative if such subcontractor, agent or representative fails to abide by any material term of such agreement. Such business associate agreement shall identify Covered Entity as a third-party beneficiary with rights of enforcement in the event of any HIPAA violations. Any Agreement with any subcontractor, agent or other representative shall specifically include all of the terms of Paragraph 2 of this Agreement.

7. **Individual Rights.** Business Associate shall comply with the following Individual rights requirements as applicable to PHI used or maintained by Business Associate:

7.1. **Right of Access.** Business Associate agrees to provide access to PHI maintained by Business Associate in a Designated Record Set, at the request of Covered Entity, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. §164.524. Such access shall be provided by Business Associate in the time and manner designated by Covered Entity, including, where applicable, access by electronic means pursuant to Section 13405(e) of the HITECH Act.

7.2. **Right of Amendment.** Business Associate agrees to make any amendment(s) to PHI maintained by Business Associate in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. §164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.

7.3. **Right to Accounting of Disclosures.** Business Associate agrees to document such disclosures of PHI as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528. Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, such information collected in order to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528, as amended by Section 13405(c) of the HITECH Act and any related regulations or guidance issued by HHS in accordance with such provision.

7.4. **No Waiver of Privilege.** Notwithstanding 7.1, 7.2, and 7.3 above, Business Associate shall not permit access to any record if such access would violate Alachua County's or Business Associate's ethical responsibilities or any privileges which Business Associate or Alachua County may have under Florida or Federal law. To the maximum extent permitted by law, BUSINESS ASSOCIATE hereby reserves and retains any and all privileges which Alachua County may have under Florida or Federal law related to the confidentiality of all patient records of Alachua County or any attorney-client privilege or any attorney-work product privilege which Alachua County may have with respect to Business Associate's performance of its obligations under this section. The parties acknowledge that Alachua County retains the right to waive its attorney-client privilege with regard to its own records and to expressly instruct Business Associate to provide access to those records as a result of that waiver. In the event Alachua County determines to waive any privilege which it may have, Alachua County shall provide Business Associate with written notice of that waiver before Business Associate may act on any such decision.

8. **Ownership of PHI.** Covered Entity holds all right, title and interest in and to

any and all PHI received by Business Associate from, or created or received by Business Associate on behalf of, Covered Entity, and Business Associate does not hold, and shall not acquire by virtue of this Agreement or by virtue of providing any services or goods to Covered Entity in the course of fulfilling its obligations pursuant to this Agreement, any right, title or interest in or to such PHI. Except as specified in this Agreement, Business Associate shall have no right to compile, distribute, make any statistical analysis, or develop any report utilizing any PHI provided to Business Associate under this Agreement nor may Business Associate release any information about PHI or the PHI to any other governmental or private agency or entity without the express written consent of BUSINESS ASSOCIATE.

9. **Prohibition on Sale of PHI.** Business Associate shall not sell or receive any remuneration, direct or indirect, of any kind in exchange for PHI or in exchange for the disclosure of PHI to any public or private agency or entity, except as expressly permitted by this Agreement or by the Services Agreement or by written authorization of BUSINESS ASSOCIATE.

10. **Inspection of Books and Records.** If Business Associate receives a request, made by or on behalf of HHS requiring Business Associate to make available its internal practices, books, and records relating to the use and disclosure of PHI to HHS for the purpose of determining compliance of Covered Entity with the Privacy Standards or the Security Standards, then Business Associate shall promptly notify Covered Entity of such request. Except as otherwise set forth below, Business Associate shall make its books and records relating to the use and disclosure of PHI by Covered Entity available to HHS and its authorized representatives for purposes of determining compliance of Covered Entity with the Privacy Standards and Security Standards. To the extent permitted by law, Covered Entity hereby reserves and retains any and all privileges in which it has an interest under Federal or Florida law including attorney-client privilege or attorney-work product privilege with respect to Business Associate's performance if its obligations under this Agreement and this Section 10. Business Associate, to the maximum extent permitted by law, hereby reserves and retains any and all privileges it may have including all work product or other privileges or rights. If the Services Agreement is for legal services, then this section shall not be construed to require Business Associate to disclose or produce communications subject to the attorney-client, work-product, or other privileges or rights with respect to materials that analyze, evaluate or discuss the legal implication of PHI. Notwithstanding the above, in no event shall Business Associate delay complying with a request of HHS or its authorized representatives if such delay appears reasonably likely to result in any penalty, fine or other liability being levied or imposed upon Covered Entity (such likelihood to be determined in the sole discretion of Covered Entity), and Covered Entity has instructed Business Associate in writing to disclose the information requested by HHS or its authorized representatives. The Parties acknowledge that Covered Entity retains the right to: (i) waive the attorney-client privilege with regard to books and records, and (ii) expressly instruct Business Associate to provide HHS and its authorized representatives with such books and records in the event of such waiver.

11. **Term and Termination.**

11.1. **Term.** This Agreement shall commence on the Effective Date and end with the termination of the Services Agreement unless terminated sooner pursuant to Section 11.2.

11.2. **Termination for Breach by Covered Entity.** As provided for under 45 C.F.R. § 164.504(e)(2)(iii), Covered Entity may immediately terminate this Agreement, all relevant Services Agreement(s) and any related agreements if Covered Entity determines that Business Associate has breached a material term of this Agreement. Alternatively, and in the sole discretion of Covered Entity, Covered Entity may choose to provide Business Associate with written notice of the existence of the breach and provide Business Associate with thirty (30) calendar days to cure said breach upon mutually agreeable terms.

11.3. **Termination by Business Associate.** If Business Associate determines that Covered Entity has breached a material term of this Agreement, then Business Associate shall provide Covered Entity with written notice of the existence of the breach and shall provide Covered Entity with thirty (30) calendar days to cure said breach upon mutually agreeable terms or end the violation within this thirty (30) day period. Failure by Covered Entity to cure said breach or violation in the manner set forth above shall be grounds for immediate termination of the Services Agreement by Business Associate.

11.4 Effect of Termination. Upon termination of this Agreement, Business Associate shall recover any PHI relating to this Agreement in possession of Business Associate and its subcontractors, agents, or representatives. Business Associate shall return to Covered Entity or destroy all such PHI plus all other PHI relating to this Agreement in its possession, and shall retain no copies. If Business Associate believes that it is not feasible to return or destroy the PHI as described above, Business Associate shall notify Covered Entity in writing. The notification shall include: (i) a written statement that Business Associate has determined that it is infeasible to return or destroy the PHI in its possession, and (ii) the specific reasons for such determination. If the Parties agree that Business Associate cannot feasibly return or destroy the PHI, Business Associate shall ensure that any and all protections, requirements and restrictions contained in this Agreement shall be extended to any PHI retained after the termination of this Agreement, and that any further uses and/or disclosures shall be limited to the purposes that make the return or destruction of the PHI infeasible. If the Parties do not agree that Business Associate cannot feasibly return or destroy the PHI, then Business Associate shall comply with this Paragraph 11.4. If Business Associate refuses to comply with this Paragraph 11.4, then Covered Entity shall treat the refusal as a material breach of this Agreement.. In all events, Business Associate further agrees to comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment of such PHI. It is expressly understood that all limitations, restrictions or prohibitions on the use or disclosure of PHI by Business Associate shall continue to exist and shall survive termination of this Agreement for any reason. Notwithstanding the foregoing, nothing in this Paragraph 11.4 shall be interpreted to prevent Business Associate with complying with 45 CFR 164.528. To the degree Business Associate must retain PHI in order to comply with 45 CFR 164.528, Covered Entity shall be deemed to have been

given advance notice of such.

12. **Notices.** Any and all notices and other communications required or permitted to be given under this Agreement shall be: (a) delivered by personal delivery, provided the person to whom delivered signs a receipt; (b) delivered by commercial courier such as Federal Express, provided the person to whom delivered signs a receipt or the commercial courier can verify delivery; (c) sent by overnight U.S. express mail, provided the postal service can verify delivery; (d) sent by registered or certified mail, postage prepaid, provided delivery is actually made; or (e) sent by facsimile, provided the person that sent the notice can verify delivery. All notices shall be sent to the following addresses or to such other addresses as shall be furnished by notice to the other party in accordance with the provisions of this Section 12:

If to Alachua County:

12 S.E. 1st Street
Gainesville, FL 32601

Attn: Chairman

If to Business Associate:

ESO Solutions, Inc
ATTN: Legal Department
11500 Alterra Parkway, STE 100
Austin, Texas 78758

13. **Miscellaneous.**

13.1. **Survival.** The respective rights and obligations of the Parties under Section 10 (Inspection of Books and Records), Section 11.4 (Effect of Termination), and Section 13 (Miscellaneous) shall survive termination of this Agreement indefinitely, and those other provisions of this Agreement that apply to rights or obligation of a Party, which continue or arise upon or after the termination of this Agreement shall survive the termination this Agreement to the extent necessary to enforce such rights and obligations and to otherwise effectuate such provisions. It is expressly understood that all limitations, restrictions or prohibitions on the use or disclosure of PHI by Business Associate shall continue to exist and shall survive termination of this Agreement for any reason.

13.2. **State Law.** In addition to HIPAA and the HITECH Act, Business Associate shall comply with all applicable Florida law related to patient privacy or other privacy restrictions on records of BUSINESS ASSOCIATE and federal security and privacy laws.

13.3. **Regulatory References.** A citation in this Agreement to the Code of Federal Regulations shall mean the cited section as that section may be amended from time to time.

13.4. **Amendment.** This Agreement may be amended or modified only in a writing signed by the Parties. The Parties agree that they shall negotiate amendments to this

Agreement to conform to any changes in the HIPAA Rules as are necessary for Covered Entity to comply with the current requirements of the HIPAA Rules. In addition, in the event that either Party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Rules or any other applicable legislation, then such Party shall notify the other Party of its belief in writing. For a period of up to thirty (30) days, the Parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty-day period, the Agreement fails to comply with the HIPAA Rules or any other applicable legislation, then either Party has the right to terminate this Agreement and the Services Agreement upon written notice to the other Party.

135. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules and the HITECH Act and permit compliance with requirements of Florida patient confidentiality law to the extent they are more stringent than HIPAA Rules or the HITECH Act.

136. Governing Law; Venue. This Agreement shall be governed by and construed in all respects by the laws of the State of Florida. The state court forum for any action commenced under this Agreement shall be in the Circuit Court in and for the Eighth Judicial Circuit of Florida. In the event Federal Court jurisdiction is mandated by some state or federal law, then venue and jurisdiction shall be The United States District Court in the Northern District of Florida, Gainesville Division.

137. No Third Party Beneficiaries. Except as provided in Section 6, nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors and permitted assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

138. Severability. In the event any provision of this Agreement is held to be unenforceable for any reason, such unenforceability shall not affect the remainder of this Agreement, which shall remain in full force and effect.

139. Assignment. Neither Party may assign this Agreement without the prior written consent of the other.

13.10 Attorney's Fees and Costs. Should legal action be required to enforce the terms of this Agreement, the prevailing Party will be entitled to receive from the other Party all costs incurred in connection with such action, including reasonable attorney, legal assistant, investigator, and other paralegal and clerical fees and costs, including such costs and fees on appeal, if any.

13.11 Binding Effect. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

EXHIBIT 3: Insurance Requirements

TYPE "B" INSURANCE REQUIREMENTS "Professional or Consulting Services"

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the contractor, his agents, representatives, employees or subcontractors.

I. COMMERCIAL GENERAL LIABILITY.

Coverage must be afforded under a per occurrence form policy for limits not less than \$1,000,000 General Aggregate, \$1,000,000 Products / Completed Operations Aggregate,

II. AUTOMOBILE LIABILITY.

Coverage must be afforded including coverage for all Owned vehicles, Hired and Non-Owned vehicles for Bodily Injury and Property Damage of not less than \$1,000,000 combined single limit each accident.

III. WORKERS COMPENSATION AND EMPLOYER'S LIABILITY.

A Coverage to apply for all employees at STATUTORY Limits in compliance with applicable state and federal laws; if any operations are to be undertaken on or about navigable waters, coverage must be included for the USA Longshoremen & Harbor Workers Act.

B Employer's Liability limits for not less than \$100,000 each accident; \$500,000 disease policy limit and \$100,000 disease each employee must be included.

IV. Computer processor/computer professional liability insurance (Technology Errors and Omissions") covering the liability for financial loss due to error, omission or negligence of Professional, and Privacy and Network Security insurance ("Cyber") covering losses arising from a disclosure of confidential information, with a combined aggregate amount of \$1,000,000.

V. OTHER INSURANCE PROVISIONS.

A The policies are to contain, or be endorsed to contain, the following provisions:

B Commercial General Liability and Automobile Liability Coverages

1 The Alachua County Board of County Commissioners, its officials, employees and volunteers are to be covered as an Additional Insured as respects: Liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor.

2 The Contractor's insurance coverage shall be considered primary insurance as respects the County, its officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officials, employees or volunteers shall be excess of Contractor's insurance and shall be non-contributory.

C All Coverages

1 The Contractor shall provide a Certificate of Insurance to the County with a notice of cancellation. The certificate shall indicate if cover is provided under a "claims made" or "per occurrence" form. If any cover is provided under claims made from the certificate will show a retroactive date, which should be the same date of the contract (original if contract is renewed) or prior.

VI. SUBCONTRACTORS

Contractors shall include all subcontractors as insured under its policies. All subcontractors shall be subject to the requirements stated herein.

CERTIFICATE HOLDER: **Alachua County Board of County Commissioners**

EXHIBIT 3-A: Certificate of Insurance