sansio™

AMENDMENT TO MASTER SUBSCRIPTION AND LICENSE AGREEMENT

This Amendment ("Amendment") to the Master Subscription and License Agreement signed by the parties and effective May 21, 2025 ("MSA") is made and entered into effective as of May 30, 2025 ("Amendment Effective Date"), by and between Sansio, Inc., a Delaware Corporation with offices located at 525 S. Lake Avenue, Suite 405, Duluth, MN 55802 ("Sansio"), and the City of Merced, a California Charter Municipal Corporation, with an address of 678 W. 18th Street, Merced, CA 95340 ("City").

RECITALS

WHEREAS, Sansio and City, either directly or as a successor-in-interest, are parties to the MSA;

WHEREAS, City has requested an Amendment to the MSA to which Sansio is amenable;

AGREEMENT

NOW THEREFORE, in consideration of the covenants contains herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The second sentence of MSA Section 6.1, originally stating, "Thereafter, the Term will renew for successive one-year periods unless written notice is provided at least 60 days prior to the anniversary of the Effective Date," shall be amended to state, "Thereafter, the Term will renew for four (4) successive one-year periods unless written notice is provided at least 60 days prior to the anniversary of the Effective Date."
2. Except as expressly provided in this Amendment, the MSA and all its terms and provisions are hereby ratified and confirmed by the parties hereto, and all such terms and provisions remain in full force and effect.

IN WITNESS WHEREOF, the parties intending to be legally bound have executed this Amendment effective as of the date first written above.

Sansio, Inc.	City of Merced
BY: *SPatterson*	BY: _____
Name: *Stephanie Patterson*	Name: _____
Title: *General Manager*	Title: _____
Dante: *7/28/25*	Dante: _____

Approved As To Form

Craig Cornwell
City Attorney, City of Merced

sansio™

Integration & Export Addendum
Data Maintenance & Support

Proposal Date: **2/25/2025**
Proposal ID: **ADM289499**
Proposal Expiration Date: **5/30/2025**
Prepared by: **Heather Miller**

Customer Information

Agency Name: **City of Merced Fire Department**

Address:

City, State, ZIP:

Contact Name: **Mickey Brunelli**

Contact Phone:

Contact Email: **brunellim@cityofmerced.org**

Billing Information

Payer:

Address:

City, State, ZIP:

Contact Name:

Contact Phone:

Contact Email:

Description

Annual Data Maintenance & Support - Stryker ECG integration

Fee Schedule

Invoice Date	Amount
3/1/2025 - 5/30/2025 (Pro-rated)	$205.00
5/31/2025 - 5/30/2026 - contract year 3	$861.00
5/31/2026 - 5/30/2027 - contract year 4	$905.00
5/31/2027 - 5/30/2028 - contract year 5	$951.00

Additional Information

Terms & Conditions

Invoiced amounts are due and payable 30 days from the date of the invoice.

The undersigned agrees to the pricing terms identified above. This Addendum forms part of the Subscription Agreement. The terms and conditions of the Subscription Agreement in effect are incorporated into this Addendum and the parties agree to be bound by those terms and conditions.

This Integration & Export Addendum is hereby executed by:

Authorized Customer Signature

Printed Name: *Casey Wilson*
Title: *Interm Fire Chief*
Date: *4/30/25*

Authorized Sansio Signature

Stephanie Patterson

Printed Name: **Stephanie Patterson**
Title: **General Manager**
Date: **4/28/25**

CITY OF MERCED
A California Charter Municipal
Corporation

BY:_____
D. Scott McBride,
City Manager

ATTEST:
D. SCOTT MCBRIDE, CITY CLERK

BY:_____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:
CRAIG J. CORNWELL, CITY ATTORNEY

BY: *Craig Cornwell* 7/10/2025
City Attorney   Date

ACCOUNT DATA:
M. VENUS RODRIGUEZ, FINANCE OFFICER

BY:_____
Verified by Finance Officer

Sansio

HealthEMS

Prepared By: Don Bertucci

<u>**Schedule A**</u>

Prepared For: City of Merced

Pricing Valid Through:	**05/10/23**
Term:	**60 Months**
Annual Incidents:	**8,800**

HealthEMS Subscription Fees - ePCR ONLY

HealthEMS Components	Total			Period	Monthly		Annual	
ePCR	$	1,320		Year 1	$	1,483	$	17,796
EHR Connectivity-Standard	$	163		Year 2	$	1,558	$	18,696
				Year 3	$	1,636	$	19,632
Total Subscribed Monthly Fees	$	1,483		Year 4	$	1,718	$	20,616
				Year 5	$	1,804	$	21,648
Year 1 Net Monthly Subscription	$	1,483		**Total Subscription Fees**			$	98,388

Optional Extension Transaction Fees

Description		UM	Price
HealthEMS SanFax Transaction Fees	*Actual usage will be charged*	Page	$0.10

One-Time Activation Fee - ePCR ONLY

Includes System setup, configuration and training	$4,395.00
ECG Monitor Integration	$765.00
CAD Integration	$875.00
Billing Export	$1,315.00
EHR Connectivity Hospital Integration - 3 hospitals @ $300 each	$900.00
Total	**$8,250.00**

The undersigned agrees to pricing terms identified above. This Schedule A forms part of the Subscription Agreement and pricing is based on acceptance of the standard Subscription Agreement. The terms and conditions of the Subscription Agreement in effect are incorporated into this Order Form, the parties agree to be bound by those terms and conditions.

Please provide a company issued Purchase Order that includes the Billing and Shipping Address.
PO must reference payment terms of Net 30 days. **- OR -**
Required information if no Purchase Order is provided

Billing address:

Account name

Address

City

State   Zip code
Accounts payable contact information

Name

Email
Authorized customer signature

Name

Title

Sansio Authorized Signature
Stephanie Patterson
Name
General Manager
Title

Shipping address: ☐ Same as billing

Account name

Address

City

State   Zip code

Contact phone number

Customer is tax exempt: ☐ Yes   ☐ No

Signature

Date DocuSigned by:

Stephanie Patterson
Signed by: A04289DE9FD4B4...

Start Date of Plan

Sansio

HealthEMS®

SUBSCRIPTION AGREEMENT

This **HealthEMS®** Subscription Agreement (the "**Agreement**"), is between Sansio, Inc., a Delaware corporation, ("**Sansio**"), and the undersigned customer ("**Customer**").

1. HealthEMS® SYSTEM. ("System")

1.1 **Licensed Software.** The Licensed Software is the HealthEMS® software, a remote-hosted, web-based organization management solution ("**Licensed Software**") for the Fire/Emergency Medical Services industry. Sansio owns all rights to this Licensed Software, including the software comprising Data Collection Services as described in Section 1.4, and Extensions as described in Section 1.5.

1.2 **Professional Services.** Sansio makes available numerous Professional Services ("**Professional Services**") as set forth in Section 3 to help maximize the Customer's investment in the System.

1.3 **Data Center Services.** Data Center Services ("**Data Center Services**") are comprised of infrastructure and services that host, manage, and support the Licensed Software. Sansio is responsible for Data Center Services as defined in Section 2.3 up to the point of external Internet access. It is the responsibility of Customer to procure applicable hardware, software, and Internet connectivity with sufficient bandwidth to meet user demands.

1.4 **Data Collection Services.** Sansio provides flexible point-of-service (POS) data collection solutions and a secure file transfer program that uploads data via the Internet ("**Data Collection Services**"). Certain Data Collection Services require Customer to procure and support hardware that meets the specifications set forth by Sansio.

1.5 **Extensions.** Sansio may make available optional Extensions ("**Extensions**") designed to extend the functionality of Licensed Software. Extensions may include, but not be limited to, myPatientEncounters, RevNet, XchangeER, SanFax, and Data Xport for integration with third parties. Third parties may include, but not be limited to, billing vendors, payers, clearinghouses, CAD (Computer-Aided Dispatch) vendors, medical devices (such as ECG), HIE's, state reporting systems, and hospitals. Customer is responsible for acquiring licenses and paying fees to applicable third parties as required. Extension descriptions, terms, and applicable fees for setup and use, are as set forth in Extension Addendums and/or Schedule A, all of which form part of this Agreement.

1.6 **Documentation.** The term Documentation ("**Documentation**") means any users' manual(s), specifications, any documents attached to or referenced in this Agreement, any RFP response, proposal or similar document provided by Sansio and other materials accompanying the System or any of its components.

2. SYSTEM SERVICES.

2.1 **Account Management Services.** Sansio will assign a primary account manager to assist Customer in their commercial relationship with Sansio ("**Account Management Services**"). Account Management Services include, but may not be limited to, informing Customer of new Extensions or System features, identifying needs for supplemental assistance from Professional Services, advocating for Customer needs, and contract management.

2.2 **Solution Center Services.** Sansio's Solution Center Specialists provide telephone and web-based Solution Center Services ("**Application Support**") at no additional cost to Customers who are active Users. Application Support is defined as help with application navigation or troubleshooting arising from the use of the System, as designed. Application Support excludes supporting Customer procured hardware, OS, and Internet connectivity.

2.3 **Data Center Services.**

2.3.1 **System Maintenance**. Sansio will provide software updates, upgrades, and enhancements at the same time as generally available to other licensees. Sansio is responsible for deploying upgrades and enhancements for Customer's use at no additional charge to Customer. Customer may not have access to the System during times of scheduled maintenance. Prior to providing any update, upgrade, or enhancement, Sansio shall have used commercially reasonable efforts to test such item to ensure that it functions properly and in conformance with all specifications and warranties.

2.3.2 **Backups.** Backups of hosted applications and data are performed on a nightly (incremental) and weekly (full) basis. Backups will be scheduled at times so as to provide minimal impact to Customer's business activity. Sansio will maintain at least one full backup copy until after the next backup is performed. Backup will be maintained on a rolling basis and Sansio will not be responsible for archiving more than the most recent full backup. Sansio will take commercially reasonable steps to maintain data integrity in any backup, but Sansio is not responsible for loss of data or data integrity so long as Sansio has performed the backup in a commercially reasonable manner.

2.3.3 **System Access Level.** Sansio is not responsible for loss of access to the Data Center for reasons that are beyond Sansio's reasonable control. With the exception for loss of access that is beyond Sansio's reasonable control, Sansio shall maintain a level of access to the Data Center (excluding periods of emergency maintenance) of 99.9% Access Availability (**"Access Availability"**), 24 hours a day, 7 days a week, including holidays. System Access Unavailable (**"System Access Unavailable"**) is defined as the reported unscheduled inability of all subscribed users of Customer to access the Data Center and verification that the problem is within the Data Center. Total System Access Unavailable minutes are calculated by adding the period of time beginning when the Customer reports System Access Unavailable to Sansio's Solution Center and ending when Sansio's Solution Center corrects the unavailable status and closes the incident with the Customer. If the Customer does not initiate a Solution Center call, Sansio will not be obligated to issue a System Access Unavailable Credit (**"System Access Unavailable Credit"**) for the System Access Unavailability. Sansio will compute any System Access Unavailability on a quarterly average basis and apply a System Access Unavailable Credit to the next Customer invoice in the event that the stated Access Availability commitment was not met. This occurs on a pro-rated basis limited to the maximum of the total invoice charges based on the total billing period. System Access Unavailable Credits will not be given for events occurring during any period in which the Customer's account has an undisputed past due balance or the Customer is otherwise in breach of Agreement. The System Access Unavailable Credit will be calculated according to the following schedule:

99.9%	- 100%	Covered under Agreement
99.5%	- 99.89%	(1) day credit
98.5%	- 99.49%	(2) days credit
97.5%	- 98.49%	(1) week credit
96.5%	- 95.00%	(2) weeks credit
0%	- 94.49%	(1) month credit

3. **PROFESSIONAL SERVICES.** Sansio shall provide Professional Services on a fee-for-service basis (**"Professional Services"**) to assist the Customer with successful implementation and effective utilization of the System.   Any Professional Services performed by Sansio, including without limitation to, consulting, mapping, migration, configuration, and implementation services, shall be performed under a statement of work defined in an applicable Professional Services Engagement and shall be subject to the terms and conditions in this Subscription Agreement.

3.1 **Project Manager Services.** Sansio Project Managers provide Professional Services on a fee-for-service basis, assisting Customers to operationalize the solution to meet specific organizational objectives (**"Project Manager Services"**). Project Manager Services include, but may not be limited to, Training, Implementation, and Consulting that requires specific knowledge of the Customer's data set, research goals, and operational objectives. Project Manager Services may be provided web-based, at Sansio offices, or onsite at Customer location.

3.2 **Resources to be Provided by Customer**. Customer shall provide, maintain and make available to Sansio, at Customer's expense and in a timely manner, the resources described in this section 3, the Statement of Work, and such other additional resources as Sansio may from time-to-time reasonably request in connection with Sansio performance of the Services. Delays in the provision of these resources may result in delays in the performance of the Services, or an increase in the Price. Customer will designate qualified Customer personnel or representatives to consult with Sansio on a regular basis in connection with the Services. Customer will furnish such documentation and other information as is reasonably necessary to perform the Services. Customer shall furnish access to Customer's network, premises, and appropriate workspace for any Sansio personnel working at Customer's premises, as necessary for performance of

those portions of the Services to be performed at Customer's premises. Customer shall meet any additional assumptions noted on the Statement of Work.

3.3 **Intellectual Property.** Customer and Sansio shall each retain ownership of, and all right, title and interest in and to, their respective pre-existing Intellectual Property, and no license therein, whether express or implied, is granted by this Agreement or as a result of the Professional Services performed hereunder. To the extent the parties wish to grant to the other rights or interests in pre-existing or developed Intellectual Property, separate license agreements on mutually acceptable terms will be executed. The Professional Services performed, code developed, and any Intellectual Property produced pursuant to this Subscription Agreement or any Statement of Work are not "works for hire." As used herein, "Intellectual Property" shall mean inventions (whether or not patentable), works of authorship, trade secrets, copyright, techniques, know-how, ideas, concepts, algorithms, and other intellectual property incorporated into any Statement of Work whether or not first created or developed by Sansio in providing the Services.

4. CUSTOMER REQUIREMENTS.

4.1 **Internet Connectivity.** Customer must provide Internet connectivity to the System web site with sufficient bandwidth to meet Customer's utilization demands. System performance is a function of bandwidth and latency time from client desktop to the System web site. Customer must connect with Sansio supported browsers and client software.

4.2 **Named User Identification and Authentication.** The System requires a unique user name and password for each authorized individual Customer representative ("**Named User**") to access the System via Sansio's Data Center(s). Customer is responsible for administration and management of Named User accounts, including the appropriate technical and administrative safeguards to prevent unauthorized access. Sansio shall have no responsibility for unauthorized access to Customer's Data or Confidential Information that results from Customer's failure to prevent unauthorized access.

5. LICENSE AND FEES.

5.1 **License.** During the term of this Agreement, and subject to the terms and conditions of this Agreement, Sansio hereby grants to Customer a non-exclusive, non-transferable (except as provided in this Agreement) license to access and use the System.

5.2 **Fees.**

5.2.1 **Activation Fee.** The Activation Fee set forth in Schedule A is non-refundable and due upon execution of Schedule A.

5.2.2 **Subscription Fees.** Customer agrees to pay Subscription Fees as set forth in this Section and Schedule A. Sansio will invoice Customer for Monthly Subscription Fees as set forth in Schedule A during the Subscription Term.

5.2.2.1 **Incident Fees.** Customer's pricing is identified in Schedule A based on Customer projections of incident volume ("**Estimated Annual Incident Volume**"). In the event the Customer's actual annual incident volume varies from Estimated Annual Incident Volume, as identified in Schedule A, by more than 5%, Sansio reserves the right to adjust the Subscription Fees, applicable to actual incident volume, provided the Customer is given 45 days prior written notice of such adjustment. Subscription Fees include: Data Center Services, Data Collection Services, Application Licensing, System Maintenance, and Upgrades, Application Support, Integration Fees, and optional Extension usage. Should Customer not agree to adjustment, Customer may choose to terminate the Agreement as set forth in Section 6.3.

5.2.2.2 **RevNet Fees.** Customer's pricing is identified in Schedule A based on Customer projections of annual net collections. In the event the Customer's actual annual net collections varies from the annual net collections identified in Schedule A, by more than 5%, Sansio reserves the right to make adjustments to the Subscription Fees, applicable to actual annual net collections, provided the Customer is given 45 days prior written notice of such adjustment. Subscription Fees include: Data Center Services, Data Collection Services, Application Licensing, System Maintenance, and Upgrades, Application Support, Integration Fees, and optional Extension usage. Should Customer not agree to adjustment, Customer may choose to terminate the Agreement as set forth in Section 6.3.

5.2.2.3 **Subscription Fee Invoicing.** Following Term Start Date, Sansio will invoice the Customer as set forth in Schedule A. Customer will be invoiced monthly Subscription Fees 30 days in

advance, due and payable by the first of the month during the Term identified in Section 6 and in Schedule A.

5.2.3   **Optional Extension Fees.** Customer agrees to pay optional Extension fees as set forth in Extension Addendum(s) and/or Schedule A. Optional Extension fees are based on the actual transaction usage for the optional Extensions.

    5.2.3.1   **Optional Extension Fee Invoicing.** Optional Extension fees will be invoiced monthly for the previous month's actual use at the Unit Price listed in Schedule A or applicable Extension Addendum.

5.2.4   **Professional Services Fees.** Customer agrees to pay Professional Services fees as set forth in applicable Professional Services engagements. Payment terms and conditions are as follows:

    5.2.4.1   **Professional Services Invoicing.** Professional Services will be invoiced monthly for the previous month's actual use at the Unit Price listed in applicable Professional Services engagements. Professional Services time will be logged and made electronically available to Customer with a minimum activity time of fifteen (15) minutes, rounded up to the nearest fifteen (15) minute increment, for hourly-based Professional Services.

    5.2.4.3   **Cancellations.** Cancellation within 24 hours of scheduled Professional Services appointments will result in a minimum charge of one (1) hour for Web-based Professional Services or two (2) days for Onsite Professional Services plus any non-cancellable expenses.

    5.2.4.4   **Modifications.** In the event that Professional Services result in greater Sansio duties than contemplated by the Statement of Work, Customer will work closely and in good faith with Sansio to modify the Statement of Work to ensure that the Customer's requirements are addressed and Sansio's fees shall be adjusted to reflect increased Customer requirements. Unless specifically addressed in the Statement of Work, all travel and expenses incurred will be extra and billed at the time of incurrence. Invoiced amounts are due and payable 30 days from the date of the invoice.

    5.2.4.4   **Travel and Expenses.** Sansio shall invoice Customer for such reimbursable expenses, as authorized with receipt of signed Professional Services Engagements. Actual charges will be based upon hours consumed and expenses incurred in engagement. Travel Fees, as set forth on the Professional Services Engagements, include but may not be limited to airfare, lodging, ground transportation, staff per diem, and other related travel expenses.

5.2.5   **Taxes:** Sansio is required to collect sales tax from products and services provided to customers in certain states. Sansio reserves the right to invoice the Customer those taxes now or at any time in the future, including interest and penalties imposed by any governmental authority which are imposed upon the sale or delivery of items purchased or licensed. Customer is required to provide a tax exempt status form in order for Sansio to correctly identify tax status.

If a certificate of exemption or similar document or proceeding is to be made in order to exempt the sale from sales or use tax liability, Customer will obtain and purchase such certificate, document or proceeding.

5.2.6   **Payment.** All invoiced fees shall be due and payable within 30 days of the date of an invoice. For Professional Services, invoices shall be sent either monthly or upon completion of milestones (as defined in the statement of work).

5.2.7   **Default.** Customer will be considered delinquent if payment in full is not received 30 days from the date of the invoice. Sansio reserves the right to suspend or terminate this Agreement and Customer access to the Service if the Customer account becomes delinquent and is not cured within 10 days of notice of delinquency. Customer will continue to be charged and hereby agrees to pay for Service during any period of suspension. Customer's failure to pay any invoice after this 10-day period shall constitute a material default hereunder and shall entitle Sansio to exercise any and all rights and remedies provided herein or at law including a suspension of Services under the Agreement. In the event of a dispute between the parties that does not result in a termination of the Agreement, Customer agrees to make all Monthly Service Fee payments due under the Agreement pending the resolution of the dispute.

5.2.8   **Interests and Costs.** Undisputed amounts not paid when due will bear interest at the rate of 1.5% on the unpaid balance each month, or such lesser rate of interest as shall be the maximum amount

chargeable with respect to this account under the law in effect in the state of Customer's location. In the event of non-payment or default by Customer, Customer agrees that all costs of enforcement and collection, including reasonable attorneys' fees, will be paid by Customer.

6. TERM AND TERMINATION.

6.1 **Term Start Date.** Customer's Term Start Date is the date of customer signature date on Schedule A, or, in the case of renewal, the first day after expiration of previous Term. The Term Start Date represents the first day of the Subscription Term.

6.2 **Term Initiation.** This Agreement takes effect on the date of last signature date on Schedule A and continues through the conclusion of the Subscription Term or any subsequent Renewal Subscription Term. The Subscription Term (the "**Term**") begins on the Term Start Date and ends at the conclusion of the Term as noted in Schedule A or any subsequent renewal Schedule A's. Subscription Fees commence on the Term Start Date and continue throughout the Term of this Agreement. Upon acceptance of this Agreement, Sansio will provide Customer with an access code to use the Licensed Software via Sansio's Data Center and the Internet.

6.3 **Term Renewal.** This Agreement shall automatically renew upon expiration of the then current Term, at the current System price list for the same Term, unless Customer notifies Sansio of its intention of nonrenewal by written notification at least 60 days prior to the end of the then current Term, or unless Sansio requires a new Agreement to be executed by the parties. If Sansio requires a new Agreement, it will be provided to Customer at least 60 days prior to the end of the then current Term. Customer may decline to enter into a new Agreement in its sole and absolute discretion, and if Customer so declines, then Customer shall not be responsible for Early Termination Fees as set forth in Section 6.4.

6.4 **Termination.** Either party may terminate the Agreement upon the other party's material breach of this Agreement, if within 30 days of receipt of written notification of breach (10 days in the case of non-payment), the breaching party has failed to cure its breach. Sansio may terminate Customer's access to the System immediately upon Termination of the Agreement. In the event of early Termination due to material breach by Customer, Customer shall be responsible for Early Termination Fee per Section 6.4 of this Agreement. In the event of early Termination due to material breach by Sansio, Customer shall not be responsible for Early Termination Fee as set forth in Section 6.5.

Notwithstanding anything in this Section 6 or in this Agreement to the contrary, Customer may terminate this Agreement and Customer obligations hereunder during the initial Term or any subsequent renewal Term, without cause, for any reason, or for no reason, and in Customer's sole and absolute discretion by payment to Sansio of the Early Termination Fee as set forth in Section 6.4. Sansio acknowledges and agrees that payment of such Early Termination Fee shall be Sansio's sole remedy therefor. Customer must notify Sansio of its intention for early Termination by written notification at least 90 days before the desired Termination date. Early Termination must occur on a monthly anniversary of the then current Term.

Notwithstanding any term or provision in this Agreement to the contrary, if Customer is current on all payments due to Sansio, upon termination of this Agreement, Sansio will make available to Customer Customer's raw data in in its then existing, native format for a period of thirty days post termination of this Agreement. Additionally, Sansio can produce for Customer an export of their data in its then existing, native format and provide that export to Customer within 90 days of Termination or expiration of this Agreement for a fee of $500. Requests for Customer data in a form other than its existing format shall be performed under a mutually agreeable statement of work. Customer directs, and Sansio shall delete all Customer Data upon the earlier of (a) delivery to Customer or (b) 90 days from the date of termination of this Agreement.

6.5 **Early Termination Fee.** Upon early Termination for breach by Customer or for such other early Termination as described in Section 6.3 of this Agreement, Sansio reserves the right to charge Customer a pro-rated Early Termination Fee based on the percentage of the current Term utilized. The percentage will be applied to the remaining Subscription Fees for the current Term as selected by Customer on Schedule A. Sansio acknowledges and agrees the Early Termination Fee will be Sansio's sole remedy therefor.

Example:	Current Term Length:	36 month	
	Desired Early Termination Date:	end of month 30	
	Percentage of Term Utilized:	83%	
	Pro-Rated Termination Percentage:	17%	
	Monthly Subscription Fee:	$ 2,000	(Per Schedule A)
	Remaining Subscription Fees per current Term:	$12,000	(6 months @ $2,000)
	Early Termination Fee:	$ 2,040	(17% of $12,000)

7. PROPRIETARY RIGHTS OF SANSIO IN THE LICENSED SOFTWARE AND DOCUMENTATION.

7.1 **Nature of Rights and Title.** Customer acknowledges that the System and Documentation supplied by Sansio to Customer are proprietary and shall remain the property of Sansio and nothing in this Agreement shall be construed as transferring any aspect of such rights to Customer or any third party. Any changes, additions, and enhancements in the form of new or partial programs or Documentation as may be provided under this Agreement shall remain the proprietary property of Sansio. Customer agrees with Sansio that the System, Documentation and all other proprietary information or data supplied by Sansio are trade secrets of Sansio, are protected by civil and criminal law, and by the law of copyright, are very valuable to Sansio, and that their use and disclosure must be carefully and continuously controlled. Customer further understands that operator manuals, training aids, and other written materials regarding the System are subject to the Copyright Act of the United States. Customer shall keep each and every item to which Sansio retains title free and clear of all claims, liens and encumbrances except those of Sansio and any act of Customer, voluntary or involuntary, purporting to create a claim, lien or encumbrance on such an item shall be void.

7.2 **Unauthorized Acts.** Customer agrees to notify Sansio promptly of the unauthorized possession, use, or knowledge of any item supplied under this license and of other proprietary information made available to Customer under this Agreement, by any person or organization not authorized by this Agreement to have such possession, use or knowledge. Customer will promptly furnish full details of such possession, use or knowledge to Sansio, will assist in preventing the continuation or recurrence of such possession, use or knowledge, and will cooperate with Sansio in any litigation against third parties deemed necessary by Sansio to protect its proprietary rights. Customer's compliance with this subparagraph shall not be construed in any way as a waiver of Sansio's right, if any, to recover damages or obtain other relief against Customer for its negligent or intentional harm to Sansio's proprietary rights, or for breach of contractual rights.

7.3 **Remedies.** If Customer attempts to use, copy, license, sub-license, or otherwise transfer the Licensed Software or access to the System supplied by Sansio under this Agreement, in a manner contrary to the terms of this Agreement or in competition with Sansio or in derogation of Sansio's proprietary rights, whether these rights are explicitly stated, determined by law, or otherwise, Sansio shall have the right to injunctive relief enjoining such action, in addition to any other remedies available. Customer acknowledges that other remedies are inadequate.

7.4 **Infringement Indemnification.** Sansio shall indemnify and defend Customer from and against any and all loss, cost, damage or liability, including reasonable attorneys' fees and expenses, arising out of or relating to any third party claim or cause of action for patent, copyright, and/or other intellectual property infringement (**"Infringement Claim"**) asserted against Customer by virtue of the System, Software or Documentation or Customer's use or possession of the System, Software or Documentation pursuant to this Agreement. Sansio shall defend and settle at its sole expense all suits and proceedings arising out of the foregoing, provided that Customer gives Sansio reasonably prompt notice of any such Infringement Claim of which it learns. In all events, Customer shall have the right to participate at its own expense in the defense of any such suit or proceeding through counsel of its own choosing. In the event any Infringement Claim is asserted by a third party with respect to the System or Customer's use thereof, then and in that event, Customer may terminate its use of the System and/or this Agreement without payment of any Early Termination Fee.

8. CONFIDENTIALITY AND DATA USE.

8.1 **Confidential Information.** The parties agree that any Confidential Information provided under this Agreement shall be held and maintained in strict confidence. Each party agrees to protect the Confidential Information of the other party in a manner consistent with the protections used to protect its own Confidential Information, including, without limitation, informing its employees of its obligations under this Agreement and taking such steps as are reasonable in the circumstances, or as reasonably requested by the other party, to prevent any unauthorized disclosure, copying or use of Confidential Information. Confidential Information means any proprietary material that the disclosing party designates as confidential (**"Confidential Information"**). Confidential Information shall also include, without limitation, all information in any form which relates to the business, expertise and/or operations of the disclosing party, including without limitation, information in any form generally understood to be trade secret, proprietary or confidential and/or that is related to products and services, commercial and financial information, system functionality charts and descriptions, program code logic, trade secret information, and information about health care providers, customers and/or business partners. Confidential Information shall also include Protected Health Information as defined in HIPAA and its rules and regulations promulgated here under. Sansio will not use Confidential Information except as expressly provided in this Agreement. Confidential Information does not include information that (i) is already known to the receiving party at the time it is

disclosed and has not been obtained wrongfully, (ii) becomes publicly known without the fault of the receiving party, (iii) is independently developed by the receiving party, (iv) is approved for release in writing by the disclosing party, (v) is disclosed without restriction by the disclosing party to a third party, or (vi) is disclosed pursuant to applicable statutory or other legal or accreditation obligation beyond the control of the receiving party.

8.2 **Unauthorized Disclosure.** The recipient of any Confidential Information shall, upon discovery of any unauthorized use or disclosure of such Confidential Information, or any other breach of these confidentiality obligations by the recipient, fully cooperate with the disclosing party to assist the disclosing party to regain possession of the Confidential Information and prevent the further unauthorized use or disclosure of the Confidential Information.

8.3 **Remedies.** The parties acknowledge and agree that in the event of a breach of this Section 8 the non-breaching party will suffer irreparable injuries not compensable by money damages alone and therefore the non-breaching party will not have an adequate remedy at law. The non-breaching party shall be entitled to seek injunctive relief without the necessity of posting any bond or undertaking to prevent any further breach. Such remedy shall be in addition to any other remedy the non-breaching party may have.

8.4 **Data Use.** Sansio recognizes the importance in identifying issues and improvements surrounding the functionality, integration, performance, and reliability of the System. Customer agrees that Sansio may collect, maintain, and use technical information related to the System, including but not limited to, its usage, functionality, integration, performance, and reliability. Sansio may use this information to improve its products or to provide customized services or technologies.

Customer retains all ownership rights to System data it generates through use of the System during the Term, except that Customer grants Sansio a perpetual, royalty-free license to compile, sell, analyze, use, and distribute de-identified aggregated data to the extent necessary to fulfill Sansio's obligations under any agreement or for any other lawful purpose. Sansio represents and warrants that it will only employ methods to de-identify the data that do not involve actual disclosure of Protected Health Information to Sansio.

9. LIMITED WARRANTY.

For the duration of this Agreement (the "**Warranty Period**"), Sansio will checkout, document, and deliver any amendments or alterations to the Licensed Software or other System components that may be required to correct errors which significantly affect performance. This warranty is contingent upon Customer advising Sansio in writing of such errors. Sansio shall not be responsible for maintaining Customer-modified portions of the Licensed Software or other System components. Corrections for difficulties or defects traceable to Customer errors or System changes made by Customer will be billed at standard Sansio's time and materials rates.

THE LIMITED WARRANTY SET FORTH IN THIS AGREEMENT IS THE ONLY WARRANTY MADE BY SANSIO. SANSIO EXPRESSLY DISCLAIMS, AND CUSTOMER HEREBY EXPRESSLY WAIVES, ALL OTHER WARRANTIES EXPRESS, IMPLIED OR STATUTORY, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE. SANSIO DOES NOT WARRANT THAT THE LICENSED SOFTWARE OR SYSTEM WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT, EXCEPT AS REQUIRED HEREIN TO ADDRESS ERRORS THAT SIGNIFICANTLY AFFECT PERFORMANCE, ERRORS IN THE LICENSED SOFTWARE OR SYSTEM WILL BE CORRECTED. SANSIO'S LIMITED WARRANTY IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF SANSIO FOR THE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE INSTALLATION, USE OR PERFORMANCE OF THE LICENSES SOFTWARE OR SYSTEM.

10. LIMITATION OF LIABILITY.

A PARTY'S LIABILITY FOR ANY ACTIONS, CLAIMS OR DAMAGES ARISING OUT OF OR RESULTING FROM THIS AGREEMENT OR THE SYSTEM IS LIMITED TO THE AMOUNTS PAID BY CUSTOMER IN THE 12-MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM AROSE. IN NO EVENT WILL SANSIO BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, ECONOMIC, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOST REVENUE, LOST PROFITS, REPLACEMENT GOODS, LOSS OF TECHNOLOGY RIGHTS OR SERVICES, LOSS OR CORRUPTION OF DATA, OR INTERRUPTION OR LOSS OF USE OF SOFTWARE OR ANY PORTION THEREOF REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH DAMAGES ARE SOUGHT EVEN IF SANSIO HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. NOTWITHSTANDING THE FOREGOING, AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, NO LIMITATION OF LIABILITY OR LIMITATION OF WARRANTY OR DISCLAIMER SHALL BE APPLICABLE TO CUSTOMER'S BREACH OF ITS OBLIGATIONS UNDER SECTION 5 LICENSE FEES, SECTION 7.4 INFRINGEMENT INDEMNIFICATION, OR TO A PARTY'S BREACH OF ITS OBLIGATIONS UNDER SECTION 8.

11. HIPAA.

The parties understand, acknowledge, and agree that the System provides access to Protected Health Information (**"PHI"**) pursuant to and in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (**"HIPAA"**), and the regulations promulgated there under, the HIPAA Privacy Regulations, including, but not limited to, 45 C.F.R. Parts 160 and 164, Subpart A and Subpart E (hereinafter the **"Privacy Rule"**), and HIPAA Security Regulations, including but not limited to, 45 C.F.R. Parts 160 and 164, Subpart A and Subpart C (hereinafter the **"Security Rule"**), the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (**the "HITECH Act"**), and its implementing regulations and guidance issued by the Secretary of the Department of Health and Human Services (the **"Secretary"**), and all other applicable state and federal laws, as all amended from time to time, including as amended by the Final Rule of 2013, titled "Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the HITECH and the Genetic Information Non-Discrimination Act (**"GINA"**) (**"Omnibus Rule"**).

The Sansio Customer Business Associate Agreement can be found at www.sansio.com/terms/ which is hereby incorporated by reference to this Agreement. The parties agree to be bound by the Sansio Customer Business Associate Agreement.

12. GENERAL.

12.1 Assignment. This Agreement, and any related obligation of other party, may not be assigned in whole or in part without the prior written consent of the other party which shall not be unreasonably withheld.

12.2 Amendment. This Agreement can only be modified by a written agreement duly signed by persons authorized to sign agreements on behalf of Customer and of Sansio, and variance from the terms and conditions of this Agreement in any order or other written notification from the Customer will be of no effect.

12.3 Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

12.4 Governing Law. This Agreement will be governed by the laws of the state where the Customer is located.

12.5 Schedules. All schedules are attached hereto and incorporated by reference herein.

12.6 Entire Agreement. Customer acknowledges that its undersigned representative has read this Agreement, understands it, and agrees on behalf of Customer to be bound by its terms and conditions. Further, Customer agrees that this Agreement constitutes the complete and exclusive statement of the agreement between the parties, which supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement.

12.7 Conflicting Terms. Unless otherwise mutually agreed in writing, in the event that any terms and/or conditions in this Agreement conflict or are inconsistent with any terms and/or conditions in any attached and incorporated agreement, including but not limited to amendments, addendums, exhibits and SOW's, then the terms and conditions of this Agreement shall control.

12.8 Notices. All notices, demands, requests, and other communications made or required pursuant to the terms of this Agreement shall be in writing and shall be (1) personally delivered, sent by nationally recognized courier service, or sent by certified mail, return receipt requested, and shall be deemed to have been received upon the earlier of actual receipt or five (5) business days after deposit with the nationally recognized courier service or deposit in the mail; (2) sent by facsimile and deemed to have been received on the date of the facsimile confirmation; (3) sent by electronic means and shall be deemed to have been received upon return of a read receipt.

Unless another address for a party has been specified by providing notice as set forth herein, such notices, demands, requests and other communications permitted or allowed under this Agreement must be sent to Customer at the address set forth on the applicable order form and to Sansio at:

Sansio, Inc.
525 South Lake Ave., Suite 405
Duluth, MN 55802
Attn: Legal

This Subscription Agreement is executed by:

City of Merced   **Sansio, Inc.**

By: By:

                                                      Stephanie Patterson
_____   _____
Printed Name   Printed Name

                                                      DocuSigned by:
                                                      Stephanie Patterson
_____   _____
Signature   Signature 23042B9DF9FD4B4...

                                                      4/19/2023
_____   _____
Date   Date

                                                      General Manager
_____   _____
Title   Title

APPROVED AS TO FORM:

Laurie   Digitally signed by: Laurie
                  Avedisian-Favini
Avedisian-   DN: CN = Laurie Avedisian-
                  Favini email =
                  lfavini@lozanosmith.com C =
                  US O = Lozano Smith
By **Favini**   Date: 2023.04.20 14:10:25 -   4/20/23
                  07'00'

Assistant City Attorney   Date

Business Associate Agreement

Pursuant to and in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), and the regulations promulgated there under, the HIPAA Privacy Regulations, including, but not limited to, 45 C.F.R. Parts 160 and 164, Subpart A and Subpart E (hereinafter the "Privacy Rule"), and HIPAA Security Regulations, including but not limited to, 45 C.F.R. Parts 160 and 164, Subpart A and Subpart C (hereinafter the "Security Rule"), the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the "HITECH Act"), and its implementing regulations and guidance issued by the Secretary of the Department of Health and Human Services (the "Secretary"), and all other applicable state and federal laws, as all amended from time to time, including as amended by the Final Rule of 2013, titled "Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the HITECH and the Genetic Information Non-Discrimination Act ("GINA") ("Omnibus Rule"), all business associates of entities such as Customer must agree in writing to certain mandatory provisions regarding the use and disclosure of certain Individually Identifiable Health Information.

Sansio and Customer agree that this Agreement replaces in its entirety any previous Business Associate Agreement between the parties and/or Section 12 of any Subscription Agreement executed on or before September 23, 2013. In order to satisfy the above applicable requirements, the Parties agree as follows effective as of the Compliance Date(s):

A. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule, Security Rule, the HITECH Act, and the Omnibus Rule:

   a. Administrative Safeguards. "Administrative Safeguards" shall mean administrative actions, policies, and procedures to manage the selection, development, implementation, and maintenance of security measures to protect Electronic PHI and to manage the conduct of the workforce in relation to the protection of that information.

   b. Breach. "Breach" shall mean the unauthorized acquisition, access, use, or disclosure of unsecured PHI which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to obtain such information.

   c. Business Associate. "Business Associate" shall mean Sansio.

   d. Covered Entity. "Covered Entity" shall mean the Customer.

   e. Designated Record Set. "Designated Record Set" shall mean a group of records maintained by or for Sansio or Customer that is: (i) the medical records and billing records about individuals maintained by Sansio or Customer; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for Customer to make decisions about individuals. As used herein, the term "Record"

means any item, collection, or grouping of information that includes PHI and is created, received, maintained, or transmitted by or for Sansio or Customer.

f. Electronic Health Record. "Electronic Health Record" shall mean an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

g. Electronic Protected Health Information. "Electronic Protected Health Information" shall have the same meaning as the term "electronic protected health information" in 45 C.F.R. § 160.103, limited to the information that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity.

h. HIPAA. "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, and any amendments thereto.

i. HITECH. "HITECH" shall mean the Health Information Technology for Economic and Clinical Health Act, which is Title XIII of the American Recovery and Reinvestment Act of 2009, and any amendments, regulations, rules, and guidance issued thereto and the relevant dates for compliance, including amendments to HIPAA as applicable.

j. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

k. Individually Identifiable Health Information. "Individually Identifiable Health Information" shall mean information that is a subset of health information, including demographic information collected from an individual, and

(i) is created or received by a healthcare provider, health plan, employer, or healthcare clearinghouse; and

(ii) relates to the past, present, or future physical or mental health or condition of an individual; the provision of healthcare to an individual; and (i) identifies the individual, or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

l. Omnibus Rule. "Omnibus Rule" shall mean the Final Rule of 2013, titled "Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under HITECH and the Genetic Information Non-discrimination Act ("GINA").

m. "Physical Safeguards" shall mean physical measures, policies, and procedures to protect electronic information systems and related facilities and equipment from natural and environmental hazards and unauthorized intrusion.

n. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

o. Protected Health Information. "Protected Health Information" or "PHI" shall mean Individually Identifiable Health Information that is (i) transmitted by electronic

media; (ii) maintained in any medium constituting electronic media; or (iii) transmitted or maintained in any other form or medium. "PHI" shall not include education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. § 1232g, or records described in 20 U.S.C. § 1232g(a)(4)(B)(iv). "PHI" shall have the same meaning as the term "protected health information" in 45 CFR § 164.501, limited to the information created or received by Sansio from or on behalf of Customer.

p. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.

q. Secretary. "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his/her designee.

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

s. Security Rule. "Security Rule" shall mean the Standards for Security of Individually Identifiable Health Information at 45 CFR parts 160 and 164, subparts A and C.

t. Technical Safeguards. "Technical Safeguards" shall mean the technology, and the policy and procedures for its use that protects Electronic PHI and controls access to it.

u. Transaction Standards. "Transaction Standards" shall mean the Standards for Electronic Transactions, 45 C.F.R. 160 and 162.

v. Unsecured PHI. "Unsecured PHI" shall mean PHI not secured through the use of a technology or methodology specified in guidance by the Secretary that renders PHI unusable, unreadable, or indecipherable to unauthorized individuals.

B. Compliance with Applicable Law. Sansio acknowledges and agrees that in the course of performance of Sansio's obligations under this Agreement, Sansio might be given or obtain access to information which contains Protected Health Information. Beginning with the relevant effective dates, Sansio shall comply with its obligations under this Agreement and with all obligations of a business associate under HIPAA, HITECH, the Omnibus Rule, and other related laws and any implementing regulations, as they exist at the time this Agreement is executed and as they are amended, for so long as this Agreement is in place.

C. Uses and Disclosures of PHI. Except as otherwise limited in this Business Associate Agreement, Sansio may use and disclose Protected Health Information for, or on behalf of, Customer as specified in the Sansio Subscription Agreement. Sansio will not, and shall ensure that its directors, officers, employees, and agents do not, use or further disclose PHI received from Customer other than as permitted or required by this Agreement or as required by law. All uses and disclosures of and requests by Sansio for PHI are subject to the minimum necessary rule of the Privacy Standards and shall be limited to the information contained in a limited data set, to the extent practical, unless additional information is needed to accomplish the intended purpose, or as

otherwise permitted in accordance with Section 13405(b) of HITECH and any implementing regulations.

Customer will provide Sansio with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Sansio's permitted or required uses or disclosures.

D. Customer Responsibilities. Customer will notify Sansio of any restrictions to the use or disclosure of PHI that Customer has agreed to in accordance with 45 C.F.R. § 164.522, to the extent such restrictions affect Sansio permitted or required uses or disclosures.

Customer shall not request Sansio to use or disclose Protected Health Information in any manner that would not be permissible under HIPAA if done by a Covered Entity (unless permitted by HIPAA for a Business Associate).

Customer is responsible for implementing appropriate privacy and security safeguards to protect its Protected Health Information in compliance with HIPAA. Without limitation, it is Customer's obligation to not include Protected Health Information in non-secure channels such as email or information Customer submits to Sansio technical support personnel through a technical support request.

E. Required Safeguards To Protect PHI. Sansio will use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement. Sansio agrees to use appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of any electronic PHI in accordance with the Privacy Rule, the Security Rule, and in accordance with Section 13401(a) of HITECH and any implementing Regulations.

Sansio will maintain liability coverage indemnifying Sansio against losses or damages arising out of its treatment of PHI in performing this Agreement, with per occurrence limits not less than $2,000,000.

F. Ownership of PHI. Under no circumstances shall Sansio be deemed in any respect to be the owner of any PHI used or disclosed by or to Sansio pursuant to the terms of the Agreement. Sansio acknowledges that all rights, title, and interest in and to any PHI furnished to Sansio rests solely and exclusively with the Customer or the Individual to whom such PHI relates.

G. Reporting of Improper Use and Disclosures of PHI. Sansio will report to Customer, as soon as reasonably practical, any use or disclosure of PHI not provided for by this Agreement of which Sansio becomes aware.

H. Reporting of Breaches of Unsecured PHI. Sansio shall report to Customer, as soon as reasonably practical, a breach of Unsecured PHI, of which it reasonably becomes aware, in accordance with Section 13402(b) of HITECH.

I.   Agreements by Third Parties. Sansio will ensure that any agent, including a subcontractor, to whom Sansio provides electronic PHI created by, received from, maintained for or transmitted by Sansio on behalf of Customer agrees to the same business associate restrictions, terms, conditions, and requirements that apply to Sansio with respect to such information, including without limitation compliance with Section D hereof.

J.   Access to Protected Health Information. Sansio will, at the request of Customer, make available PHI maintained by Sansio in a Designated Record Set to Customer in order for Customer to meet the requirements under 45 C.F.R. § 164.524. In the event any Individual delivers directly to Sansio a request for access to PHI, Sansio will forward such request to Customer in order for Customer to respond to such Individual.

K.   Availability of PHI for Amendment. Sansio will, at the request of Customer, make available for amendment, and allow Customer to incorporate any amendment(s) in, any Protected Health Information in a Designated Record Set maintained by Sansio, which the Customer directs or agrees to pursuant to 45 C.F.R. § 164.526. In the event any Individual delivers directly to Sansio a request to amend PHI, Sansio will forward such request to Customer, in order for Customer to respond to such Individual.

L.   Documentation of Disclosures. Sansio agrees to document disclosures of PHI and information related to such disclosures as would be required for Customer to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. At a minimum, Sansio shall provide Customer with the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure.

M.   Accounting of Disclosures. Within ten (10) days of notice by Customer to Sansio that it has received a request for an accounting of disclosures of PHI regarding an Individual during the six (6) years prior to the date on which the accounting was requested, Sansio shall make available to Customer information collected in accordance with Section K of this Agreement, to permit Customer to respond to the request for an accounting of disclosures of PHI, as required by 45 C.F.R. § 164.528. In the case of an Electronic Health Record maintained or hosted by Sansio on behalf of Customer, the accounting period shall be three (3) years and the accounting shall include disclosures for treatment, payment, and healthcare operations, in accordance with the applicable effective date of Section 13402(a) of HITECH. In the event an Individual directly requests an accounting of disclosures, Sansio shall forward such request to Customer in order for Customer to respond to such Individual. Sansio hereby agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this Section.

N.   Compliance with HIPAA Transaction Standards. Customer and Sansio each agree to comply with all applicable HIPAA standards and requirements, (including without

limitation, those specified in C.F.R. § 162) with respect to the transmission of health information in electronic form in connection with any transaction for which the Secretary has adopted a standard under HIPAA ("Covered Transactions").

O.   **Availability of Books and Records.** Sansio agrees to make Sansio's internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Sansio on behalf of, Customer available to the Secretary for purposes of determining Customer's compliance with the Privacy Rule, Security Rule and the HITECH Act.

P.   **Effect of Termination of Agreement.** Upon termination of this Agreement for any reason, if feasible, Sansio will return or destroy all Protected Health Information created by, received from or maintained by Sansio on behalf of Customer. In the event that Sansio determines that returning or destroying the Protected Health Information is infeasible, Sansio will extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Sansio maintains such Protected Health Information.

Q.   **Red Flag Rules.** So long as Sansio retains any confidential or non-public Individually Identifiable Information, Sansio will develop, maintain, and implement policies and procedures designed to ensure the privacy, confidentiality, and security of such information, and to prevent, detect, and mitigate against the reasonably foreseeable risks of personal and medical identity theft in compliance with the requirements of law, including, without limitation, the Identity Theft, Red Flags and Address Discrepancies under the Fair and Accurate Credit Transaction Act of 2003 ("Red Flag Rules"). Sansio will cooperate with Customer in evaluating, investigating, and responding to Red Flags or any possible data breach or Identity Theft activity. Notwithstanding anything to the contrary in this Agreement or any other document, this provision shall survive the expiration or sooner termination of this Agreement, and shall inure to the benefit of Customer and its affiliates and agents.

R.   **Changes in the Law.** Sansio may amend this Agreement as appropriate, to conform to any new or revised legislation, rules and regulations to which Sansio is subject now or in the future including, without limitation, HIPAA, HITECH, the Privacy Standards, Security Standards, or Transaction Standards.

_____

Agency Name, City & State

_____

Agency Representative Name (Print)

_____

Agency Representative Signature

_____

Title

_____

Date

Stephanie Patterson
_____

Sansio Representative Name (Print)

┌─DocuSigned by:

Stephanie Patterson
└──2304289DE9FD4B4...
Sansio Representative Signature

General Manager
_____

Title

4/19/2023
_____

Date

APPROVED AS TO FORM:

Laurie
Avedisian-
By **Favini**

Digitally signed by: Laurie
Avedisian-Favini
DN: CN = Laurie Avedisian-
Favini email =
lfavini@lozanosmith.com C
= US O = Lozano Smith
Date: 2023.04.20 14:10:10 -
07'00'

_____ 4/20/23 _____

Assistant City Attorney   Date

MASTER SUBSCRIPTION AND LICENSE AGREEMENT

This Master Subscription and License Agreement (this *"Agreement"*) is entered into as of *May 24, 2021* *("Effective Date"),* by and between ESO Solutions, Inc., a Texas corporation having its principal place of business at 11500 Alterra Parkway, Suite 100 Austin, TX 78758, including its controlled subsidiaries, (collectively, *"ESO"*) and Merced Fire Department, having its principal place of business at 99 E 16th St., Merced, CA 95340 *("Customer")*. This Agreement consists of the General Terms & Conditions below and any Addenda (as defined below) executed by the parties, including any attachments to such Addenda.

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

GENERAL TERMS AND CONDITIONS

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

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

"Addendum" means a document addressing the order of a specific set of products or services which is executed by authorized representatives of each party. An Addendum may be (a) an ESO sales form or "Quote", (b) a Statement of Work, or (c) another writing the parties intend to be incorporated by reference into this Agreement.

"Anonymized Data" means Customer Data from which all personally identifiable information is 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 the Software's user guides and operating manuals.

"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.

"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 or SaaS.

"New Version" means any new version of Licensed Software (excluding SaaS Software) that ESO may from time to time introduce and market generally as a distinct licensed product, as may be indicated by ESO'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"* has 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 on a periodic subscription basis. For the avoidance of doubt, SaaS does not include Licensed Software.

"Scheduled Downtime" means periods when ESO intentionally interrupts SaaS to perform system maintenance or otherwise correct service errors during non-peak hours (except for critical circumstances), typically between midnight and 6 a.m. Central Time on a fortnightly basis.

"Software" means any ESO computer program, programming or modules specified in the Agreement or any Addendum. For the avoidance of doubt, Add-on Software, SaaS, and Licensed Software are collectively referred to as Software.

"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 made available 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.

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

3. **LICENSE/SUBSCRIPTION TO SOFTWARE**

3.1. Grant of Subscription: SaaS. For SaaS, during the Term Customer may access and use the SaaS and Reporting Services, with the access and volume limitations set forth on the applicable Addendum, subject to Customer's compliance with the Use Restrictions and other limitations contained in this Agreement.

3.2. Grant of License: Licensed Software. For Licensed Software, during the Term ESO hereby grants Customer a limited, non-exclusive, non-transferable, non-assignable, non-sublicensable, revocable license to copy and use the Licensed Software, in such quantities as are set forth on the applicable Addendum and as necessary for Customer's internal business purposes, in each case subject to Customer's compliance with the Use Restrictions and other limitations and obligations contained in this Agreement.

3.3. Use Restrictions. Except as provided in this Agreement or as otherwise authorized by ESO, Customer has no right to, and shall not: (a) decompile, reverse engineer, disassemble, print, copy or display the Software or otherwise reduce the Software to a human-perceivable form in whole or in part; (b) publish, release, rent, lease, loan, sell, distribute or transfer the Software to another person or entity; (c) reproduce the Software for the use or benefit of anyone other than Customer; (d) alter, modify or create derivative works based upon the Software either in whole or in part; or (e) use or permit the use of the Software for commercial time-sharing arrangements or providing service bureau, data processing, rental, or other services to any third party (including any affiliate not specifically listed in the applicable Addendum).

3.4. <u>Ownership</u>. The rights granted under the provisions of this Agreement do not constitute a sale of the Software. ESO retains all right, title, and interest in and to the Software, including without limitation all software used to provide the Software and all graphics, user interfaces, logos and trademarks reproduced through the Software, except to the limited extent set forth in this Agreement. This Agreement does not grant Customer any intellectual property rights in the Software or any of its components, except to the limited extent that this Agreement specifically sets forth Customer's rights to access, use, or copy the Software during the Term. Customer acknowledges that the Software and its components are protected by copyright and other laws.

3.5. <u>Third-Party Software and Services</u>. This Section 3.5 applies to Third-Party Software and Services offered by ESO. Refer to the product table following the Agreement for applicability.

3.5.1. ESO neither accepts liability for, nor warrants the functionality, utility, availability, reliability or accuracy of, Third-Party Software or Third-Party Services. The Third-Party Software "EMS1 Academy" and/or "FireRescue1 Academy" and/or "EMS1 & FireRescue1 Academy – Implementation and Configuration" and/or "Learning Management System" and/or "EVALS Implementation" (collectively, "*Education*") is offered by ESO in collaboration with Lexipol, f/k/a The Praetorian Group. If Customer subscribes to Education, Customer acknowledges and agrees to the terms and conditions of the Praetorian license agreement, located at http://www.praetoriandigital.com/LMS-Master-Service-Agreement, which shall supersede this Agreement as it applies to Customer's use of Education and any Customer Data stored therein.

3.5.2. <u>Third-Party Data</u>. If Customer (as indicated on an Addendum) elects to license Third-Party Data (e.g., fire codes), then subject to the terms hereof, ESO hereby grants Customer a non-exclusive, non-sublicensable, and non-transferable license during the Term to use such Third-Party Data via the Software solely for Customer's internal purposes. Customer will not (i) allow greater access than that set forth in the applicable Addendum, (ii) disclose, release, distribute, or deliver Third-Party Data, or any portion thereof, to any third party (iii) copy, modify, or create derivative works of Third-Party Data, (iv) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available Third-Party Data, (v) attempt to output in any form more than 10% of the Third-Party Data or otherwise circumvent the usage limitations included in the Software, (vi) remove any proprietary notices included within Third-Party Data or Software, or (vii) use Third-Party Data in any manner or for any purpose that infringes or otherwise violates any proprietary right of a person, or that violates applicable law. ESO does not warrant the functionality, reliability, accuracy, completeness or utility of, Third-Party Data, or accept any liability therefor. Additional terms and limitations applicable to Third-Party Data may be provided on the applicable Addendum.

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

4.1. <u>Hosting & Management</u>. Customer shall be responsible for hosting and managing any Licensed Software on systems meeting the requirements specified by ESO. ESO shall be responsible for hosting and managing any SaaS.

4.2. <u>Service Level Agreement</u>. If an Outage, excluding Scheduled Downtime (as defined below), results in the service level uptime falling below 99% for any three-month period (the "*Uptime Commitment*"), then Customer may immediately terminate this Agreement, in which case ESO will refund any prepaid, unearned Fees to Customer. This is Customer's sole remedy for ESO's breach of the Uptime Commitment.

4.3. <u>Scheduled Downtime</u>. ESO will endeavor to provide reasonable (72 hour) notice of Scheduled Downtime to Customer's Users. Notice of Scheduled Downtime may be provided from within the Software or via email. Scheduled Downtime shall never constitute a failure of performance or Outage by ESO. Notification timelines and the frequency of Scheduled Downtime are subject to the emergence of security concerns outside of ESO's control.

4.4. <u>Support and Updates</u>. During the Term, ESO shall provide to Customer the Support Services, in accordance with Exhibit B, which is incorporated herein by reference.

5. **FEES**

5.1. <u>Fees</u>. In consideration of the rights granted hereunder, Customer agrees to pay ESO the fees for the Software and Professional Services as set forth in the Addendum(s) (collectively, "*Fees*"). The Fees are non-cancelable and non-refundable, except as expressly provided herein. Customer (or Third-Party Payer, if applicable) shall pay all invoices within 30 days of receipt.

5.2. <u>Third-Party Payer</u>. If Customer desires to use a third-party to pay some or all of the Fees on behalf of Customer (a "*Third-Party Payer*"), then (i) each applicable Addendum will identify such arrangement, (ii) the Third-Party Payer will enter into a written agreement with ESO regarding such arrangement, (iii) Customer may replace the Third-Party Payer by written notice to ESO (provided that no such change shall be made until the then-current Term's renewal), (iv) references within this Section 5 to Customer's responsibility for Fees shall be understood to refer to the Third-Party Payer when applicable, and (v) Customer shall remain responsible for payment if the Third-Party Payer does not pay the Fees.

5.3. <u>Uplift on Renewal</u>. Fees for Software, which recur annually, shall increase by 3% each year this Agreement is in effect.

5.4. <u>Taxes and Fees</u>. The Fees are exclusive of all taxes and credit card processing fees, if applicable. Unless and until Customer provides ESO a tax exemption certificate, Customer will be responsible for and will remit (or will promptly 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) related to this Agreement.

5.5. <u>Appropriation of Funds</u>. If Customer is a city, county or other government entity, Customer may terminate the Agreement at the end of the Customer's fiscal term if Customer provides evidence that its governing body did not appropriate sufficient funds for the next fiscal year. Notwithstanding the foregoing, this provision shall not excuse Customer from past payment obligations or other Fees earned and unpaid.

5.6. <u>Usage Monitoring</u>. Customer is solely responsible for its own adherence to volume and use limitations indicated on the applicable Addendum. ESO may monitor Customer's use of the Software, and if Customer's usage exceeds the level indicated in the applicable Addendum (an "*Overage*"), Customer shall owe ESO the Fee corresponding to such usage level at a rate no higher than ESO's then-standard pricing for new customers at an equivalent usage level. ESO may invoice for Overages immediately.

6. **TERM AND TERMINATION**

6.1. <u>Term</u>. The term of this Agreement (the "*Term*") commences on the Effective Date and continues for a period of one year (or any longer period provided in an Addendum). Thereafter, the Term will renew for successive one-year periods unless written notice is provided at least 60 days prior to the anniversary of the Effective Date.

6.2. <u>Termination for Cause</u>. Either party may terminate this Agreement or any individual Addendum for the other party's uncured material breach by providing written notice. The breaching party shall have 30 days from receipt to cure such breach to the reasonable satisfaction of the non-breaching party.

6.3. <u>Effect of Termination</u>.

6.3.1. If Customer terminates this Agreement or any Addendum as a result of ESO's material breach, then to the extent Customer prepaid any Fees, ESO shall refund to Customer those prepaid Fees on a pro-rata basis from the date Customer actually ceases use of the Software.

6.3.2. Upon termination of this Agreement or any Addendum, Customer shall cease all use of the Software and delete, destroy or return all copies of the Documentation and Licensed Software in its possession or control, except as required by law. Customer shall remain obligated to pay appropriate Fees at ESO's then-current rates if Customer continues to use or access Software after the termination or expiration of this Agreement. If Customer's Agreement includes a multi-year discount plan with diminishing discounts, and Customer terminates the Agreement prior to the completion of the discount plan, Customer shall promptly pay ESO's invoice recouping such discounts for a maximum of two years prior to the date of termination.

6.3.3. Termination of this Agreement is without prejudice to any other right or remedy and shall not release a party from any liability.

6.4. Delivery of Data. ESO will provide Customer its Customer Data in a searchable .pdf format upon request made within 60 days of the expiration or termination of this Agreement. Customer acknowledges that ESO has no obligation to retain Customer Data more than 60 days after expiration or termination of this Agreement.

7. REPRESENTATIONS AND WARRANTIES

7.1. Material Performance of Software. After it is fully implemented (and subject to Customer's adherence to Sections 3.3, 4.1 and 13.4), ESO warrants that the Software will reliably collect, transmit, store and/or permit access to data in compliance with applicable law and industry standards.

7.2. Due Authority. Each party's execution, delivery and performance of this Agreement and each agreement or instrument contemplated by this Agreement is duly authorized by all necessary corporate or government action.

7.3. Customer Cooperation. Customer agrees to use current operating systems and reasonably and timely cooperate with ESO, including providing ESO reasonable access to its equipment, software and data as necessary for the implementation and operation of the Software.

8. DISCLAIMER OF WARRANTIES. EXCEPT AS OTHERWISE PROVIDED IN SECTION 7, ESO DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, TITLE, NON-INFRINGEMENT, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7, CUSTOMER ACCEPTS THE SOFTWARE "AS-IS" AND "AS AVAILABLE."

9. CONFIDENTIALITY

9.1. "Confidential Information" refers to the following items: (a) any document marked "Confidential"; (b) any information orally designated as "Confidential" at the time of disclosure, provided the disclosing party confirms such designation in writing within five business days; (c) the Software and Documentation, whether or not designated confidential; (d) ESO's security controls, policies, procedures, audits, or other information concerning ESO's internal security posture; (e) any other nonpublic, sensitive information reasonably treated as trade secret or otherwise confidential; and (f) Customer Data which does not comprise PHI . Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in the other party's possession at the time of disclosure free of duty of non-disclosure; (ii) is independently developed without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of the receiving party's improper action or inaction; (iv) is approved for release in writing by the disclosing party; (v) as to ESO, Customer's Feedback; or (vi) is PHI (which shall be governed by the Business Associate Agreement rather than this Section).

9.2. Nondisclosure. Each party shall use Confidential Information of the other party solely to fulfill the terms of this Agreement (the "Purpose"). Each party shall (a) ensure that its employees or contractors are bound by confidentiality obligations no less restrictive than those contained herein, and (b) not disclose Confidential Information to any other third party without prior written consent from the disclosing party. Without limiting the generality of the foregoing, the receiving party shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. A receiving party shall promptly notify the disclosing party of any misuse or misappropriation of Confidential Information of which it is aware.

9.3. Termination & Return. With respect to each item of Confidential Information, the obligations of nondisclosure will terminate three years after the date of disclosure; provided that, such obligations related to Confidential Information constituting ESO's trade secrets shall continue so long as such information remains subject to trade secret protection pursuant to applicable law. Upon termination of this Agreement, a party shall return all copies of Confidential Information to the other or certify the destruction thereof.

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

9.5. Open Records and Other Laws. Notwithstanding anything in this Section to the contrary, the parties expressly acknowledge that Confidential Information may be disclosed if such Confidential Information is required to be disclosed by law, a lawful public records request, or judicial order, provided that prior to such disclosure, written notice of such required disclosure shall be given promptly and without unreasonable delay by the receiving party in order to give the disclosing party the opportunity to object to the disclosure and/or to seek a protective order. The receiving party shall reasonably cooperate in this effort. In addition, Customer may disclose the contents of this Agreement solely for the purpose of completing its review and approval processes under its local rules, if applicable.

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

10.1. Commercial general liability insurance with a minimum of $1 million per occurrence and $1 million aggregate;

10.2. Commercial automobile liability insurance covering use of all non-owned and hired automobiles with a minimum limit of $1 million for bodily injury and property damage liability;

10.3. Worker's compensation insurance and employer's liability insurance or any alternative plan or coverage as permitted or required by applicable law, with a minimum employer's liability limit of $1 million each accident or disease; and

10.4. Computer processor/computer professional liability insurance (a/k/a technology errors and omissions) covering the liability for financial loss due to error, omission or negligence of ESO, and privacy and network security insurance ("cyber coverage") covering losses arising from a disclosure of confidential information (including PHI) with a combined aggregate amount of $1 million.

11. INDEMNIFICATION

11.1. IP Infringement. Subject to the limitations in Section 12, ESO shall defend and indemnify 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 Addendum, in which case ESO will refund any pre-paid

Fees on a pro-rata basis for such Addendum. 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 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 11 states ESO's sole obligation and liability, and Customer's sole remedy, for potential or actual intellectual property infringement by the Software.

11.2. Indemnification Procedures. Upon becoming aware of any matter which is subject to the provisions of Sections 11.1 (a "Claim"), Customer must give prompt written notice of such Claim to ESO, accompanied by copies of any written documentation regarding the Claim received by the Customer. ESO shall compromise or defend, at its own expense and with its own counsel, any such Claim. Customer will have the right, at its option, to participate in the settlement or defense of any such Claim, with its own counsel and at its own expense; provided, however, that ESO will have the right to control such settlement or defense. ESO will not enter into any settlement that imposes any liability or obligation on Customer without the Customer's prior written consent. The parties will cooperate in any such settlement or defense and give each other full access to all relevant information, at ESO's expense.

12. **LIMITATION OF LIABILITY**

12.1. **LIMITATION OF DAMAGES.** NEITHER ESO NOR 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.

12.2. **SPECIFIC LIABILITY.** LIABILITY SHALL BE LIMITED AS FOLLOWS:

(a) ESO'S OBLIGATIONS UNDER SECTION 11 SHALL BE LIMITED TO $500,000.

(b) DAMAGES ARISING FROM A PARTY'S BREACH OF CONFIDENTIALITY OBLIGATIONS (INCLUDING A BREACH OF OBLIGATIONS REGARDING PROTECTED HEALTH INFORMATION), SHALL BE LIMITED TO $1,000,000.

(c) DAMAGES ARISING FROM A PARTY'S WILLFUL MISCONDUCT OR CRIMINAL CONDUCT SHALL NOT BE LIMITED.

12.3. **GENERAL LIABILITY.** EXCEPT AS EXPRESSLY PROVIDED "SPECIFIC 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 ADDENDUM OR EXHIBIT GIVING RISE TO THE CLAIM.

12.4. THE FOREGOING LIMITATIONS, EXCLUSIONS, DISCLAIMERS SHALL APPLY REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT OR OTHERWISE. INSOFAR AS APPLICABLE LAW PROHIBITS ANY LIMITATION HEREIN, THE PARTIES AGREE THAT SUCH LIMITATION SHALL BE AUTOMATICALLY MODIFIED, BUT ONLY TO THE EXTENT SO AS TO MAKE THE LIMITATION PERMITTED TO THE FULLEST EXTENT POSSIBLE UNDER SUCH LAW. THE PARTIES AGREE THAT THE LIMITATIONS SET FORTH HEREIN ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR ESO'S SOFTWARE AND SERVICES TO CUSTOMER, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSES OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES.

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

13. **CUSTOMER DATA & PRIVACY**

13.1. Ownership of Data. As between ESO and Customer, all Customer Data shall be owned by Customer.

13.2. Use of Customer Data. Unless it receives Customer's prior written consent, ESO shall not grant any third-party access to Customer Data, except (a) subcontractors that are subject to a reasonable nondisclosure agreement or (b) authorized participants in the case of Software designed to permit Customer to transmit Customer Data. ESO may only use and disclose Customer Data to fulfill its obligations under this Agreement or as required by applicable law or legal or governmental authority. ESO shall give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise contest such required disclosure, at Customer's expense.

13.3. Anonymized Data. CUSTOMER ACKNOWLEDGES AND AGREES THAT, NOTWITHSTANDING ANY OTHER PROVISION HEREIN, ESO MAY USE ANONYMIZED DATA FOR INTERNAL AND EXTERNAL PURPOSES (INCLUDING BENCHMARKING AND RESEARCH), PROVIDED THAT ESO WILL NOT SELL ANONYMIZED DATA TO THIRD PARTIES FOR COMMERCIAL USE. Without limiting the foregoing, ESO will own all right, title and interest in all Intellectual Property of any aggregated and de-identified reports, summaries, compilations, analysis, statistics or other information derived therefrom.

13.4. Internet Access. Customer is solely responsible for obtaining, maintaining, and securing its network connections, and acknowledges such connections are essential to the effective operation of the Software. ESO makes no representations to Customer regarding the reliability, performance or security of any network or service provider not provided or managed by ESO.

14. **WORK PRODUCT**

14.1. Work Product Ownership. In the event Customer hires ESO to perform Professional Services, ESO alone shall hold all right, title, and interest to all proprietary and intellectual property rights of the Deliverables (including, without limitation, patents, trade secrets, copyrights, and trademarks), as well as title to any copy of software made by or for Customer (if applicable). Customer hereby explicitly acknowledges and agrees that nothing in this Agreement or a separate Addendum gives the Customer any right, title, or interest to the intellectual property or proprietary know-how of the Deliverables.

15. **GOVERNMENT PROVISIONS**

15.1. Compliance with Laws. Both parties shall comply with and give all notices required by all applicable federal, state and local laws, ordinances, rules, regulations and lawful orders of any public authority bearing on use of the Software and the performance of this Agreement.

15.2. Business Associate Addendum. The parties agree to the terms of the Business Associate Addendum attached as Exhibit B and incorporated herein by reference.

15.3. Equal Opportunity. The parties shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a), and the posting requirements of 29 CFR Part 471, appendix A to subpart A, if applicable (prohibiting discrimination on the basis of protected veteran status, disability, race, color, religion, sex, sexual orientation, gender identity or national origin).

15.4. Excluded Parties List. ESO agrees to report to Customer if an employee or contractor is listed by a federal agency as debarred, excluded or otherwise ineligible for participation in federally funded health care programs.

16. **PHI ACCURACY & COMPLETENESS**

16.1. Customer Responsibilities. The Software allows Customer and its Users to enter, document, and disclose Customer Data, and as such, ESO gives no representations or guarantees about the accuracy or

completeness of Customer Data (including PHI) entered, uploaded or disclosed through the Software. Customer is solely responsible for any decisions or actions taken involving patient care or patient care management, whether those decisions or actions were made or taken using information received through the Software.

16.2. HDE Customer Certifications. In the interest of furthering community health through the power of data, ESO encourages Customers subscribing to ESO's Health Data Exchange ("HDE") Software to empower joint healthcare providers by incorporating relevant, HIPAA-compliant data elements in Customer's outgoing patient care records delivered through HDE. ESO shall annually accredit qualifying customers with Gold, Silver, or Bronze level certifications in accordance with Exhibit C, and Customer may reference such certification in marketing materials.

17. MISCELLANEOUS

17.1. Independent Contractors. The parties are independent contractors. Neither party is the agent of the other, and neither may make commitments on the other's behalf. The parties agree that no ESO employee or contractor is or will be considered an employee of Customer.

17.2. Notices. Notices provided under this Agreement must be in writing and delivered by (a) certified mail, return receipt requested to a party's principal place of business as forth in the recitals on page 1 of this Agreement, (b) hand delivered, (c) facsimile with receipt of a "Transmission Confirmed" acknowledgment, (d) e-mail to a person designated in writing by the receiving party, or (e) delivery by a reputable overnight carrier service. In the case of delivery by facsimile or e-mail, the notice must be followed by a copy of the notice being delivered by a means provided in (a), (b) or (e). The notice will be deemed given on the day the notice is received.

17.3. Merger Clause. In entering into this Agreement, neither party is relying upon any representations or statements of the other that are not fully expressed in this Agreement; rather, each party is relying on its own judgment and due diligence and expressly disclaims reliance upon any representations or statement not expressly set forth in this Agreement. In the event the Customer issues a purchase order, letter or any other document addressing the Software or Services to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that any such writing is for the Customer's internal purposes only, and that any terms, provisions, and conditions contained therein shall in no way modify this Agreement.

17.4. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. If a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.

17.5. Subcontracting. Except for training and implementation services related to the Software, neither party may subcontract or delegate its obligations to each other hereunder, nor may it contract with third parties to perform any of its obligations hereunder except as contemplated in this Agreement, without the other party's prior written consent.

17.6. Modifications and Amendments. This Agreement may not be amended except through a written agreement signed by authorized representatives of each party, provided that the Customer agrees that ESO may rely on informal writings (including emails) of Customer's authorized representatives to (i) terminate Software products and services and (ii) approve or ratify rate or tier increases for Software products and services then in use by Customer.

17.7. Force Majeure. No delay, failure, or default will constitute a breach of this Agreement to the extent caused by acts of war, terrorism,

hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control (collectively, "Force Majeure"). In such event, however, the delayed party must promptly provide the other party notice of the Force Majeure. The delayed party's time for performance will be excused for the duration of the Force Majeure, but if the event last longer than 30 days, the other party may immediately terminate the applicable Addendum.

17.8. Marketing. If requested by ESO, Customer agrees to reasonably cooperate with ESO's preparation and issuance of a public announcement regarding the relationship of the parties.

17.9. Waiver & Breach. Neither party will be deemed to waive any rights under this Agreement except through an explicit written waiver made by an authorized representative. No waiver of a breach of this Agreement will constitute a waiver of any other breach hereof.

17.10. Survival of Terms. Unless otherwise stated, all of ESO's and Customer's respective obligations, representations and warranties under this Agreement which are not, by the expressed terms of this Agreement, fully to be performed while this Agreement is in effect shall survive the termination of this Agreement.

17.11. Ambiguous Terms. This Agreement will not be construed against any party by reason of its preparation.

17.12. Governing Law. This Agreement, any claim dispute or controversy hereunder (a "*Dispute*") will be governed by (i) the laws of the State of Texas, or (ii) if Customer is a city, county, municipality or other governmental entity, the law of state where Customer is located, in each case foregoing without regard to its conflicts of law. The UN Convention for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply. In any Dispute, each party will bear its own attorneys' fees and costs and expressly waives any statutory right to attorneys' fees.

17.13. New Versions & Sunset. If ESO releases a New Version of Licensed Software (i.e., not SaaS), Customer may elect to receive such New Version, subject to a relicense fee of 75% of the standard price for such new version. All New Versions provided under this Agreement will constitute Licensed Software and be subject to the terms and conditions of this Agreement. ESO may discontinue Support Services for Licensed Software upon 12 months' notice to Customer.

17.14. No Class Actions. NEITHER PARTY SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER ESO CUSTOMERS, OR PURSUE ANY CLAIM AS A REPRESENTATIVE OR CLASS ACTION OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.

17.15. Dispute Resolution. Customer and ESO will attempt to resolve any Dispute through negotiation or by utilizing a mediator agreed to by the parties, rather than through litigation. Negotiations and mediations will be treated as confidential. If the parties are unable to reach a resolution within 30 days of notice of the Dispute to the other party, the parties may pursue all other courses of action available at law or in equity.

17.16. Technology Export. Customer shall not: (a) permit any third party to access or use the Software in violation of any U.S. law or regulation; or (b) export any software provided by ESO or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Customer shall not permit any third party to access or use the Software in, or export such software to, a country subject to a United States embargo (as of the Effective Date - Cuba, Iran, North Korea, Sudan, and Syria).

17.17. 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 Addendum, with most recent Addendum taking precedence over

earlier ones; and (4) any ESO policy posted online, including without limitation its privacy policy. No amendments incorporated into this Agreement after execution of the General Terms and Conditions will amend such General Terms and Conditions unless it specifically states its intent to do so and cites the section or sections amended.

17.18. Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, and all such counterparts will constitute a single instrument.

17.19. Signatures. Electronic signatures on this Agreement or on any Addendum (or copies of signatures sent via electronic means) are the equivalent of handwritten signatures.

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

ESO Solutions, Inc.

By: _Robert Munden_
DocuSigned by:
BB3DGD55088847E
(signature)

Name: Robert Munden
(print name)

Title: General Counsel & Secretary
(print title)

Customer

By: _Stephani Dietz_
(signature)

Name: _Stephanie Dietz_
(print name)

Title: _City Manager_
(print title)

APPROVED AS TO FORM:

John S. Goulart 1-28-21
JOHN B. GOULART   Date
Senior Deputy City Attorney

Account Number: 061-0926-522-24-00

Amount: $18970.00

VERIFIED

BY: _____
Finance Officer

FINANCE ENTRY	
Contract No:	301498
Vendor Number:	17924
P.O. Number:	140890
Proj # 234908	
Funds Available:	yes. uj 2/16/21
	02/10/21

PL 2/16/21

ATTEST:
CITY CLERK

BY _____
Assistant/Deputy City Clerk

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

ESO Solutions, Inc.

By:_____
                    (signature)

Name:_____
                    (print name)

Title:_____
                    (print title)

Customer

By:_____
                    (signature)
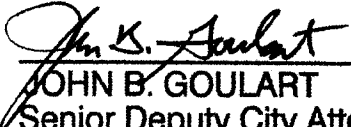
Name:_____
                    (print name)

Title:_____
                    (print title)

APPROVED AS TO FORM:

John K. Goulart   1-28-21

JOHN B. GOULART   Date

Senior Deputy City Attorney

<u>EXHIBIT A-1</u>

<u>SAAS SOFTWARE SCHEDULE</u>

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

1. The SaaS subscription term shall begin 15 calendar days after the Effective Date ("SaaS Subscription Start Date"). Customer shall be deemed to have accepted the SaaS on the SaaS Subscription Start Date. The parties will make reasonable efforts to ensure that Customer is able to use the SaaS as contemplated as quickly as possible, but in no event will the SaaS Subscription Start Date be modified for implementation delays.

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

    2.1. ESO Electronic Health Record ("EHR") is a SaaS software application for prehospital patient documentation (http://www.eso.com/software/ehr).

    2.2. ESO Personnel Management ("PM") is a SaaS software application for tracking personnel records, training courses and education history (http://www.eso.com/software/personnel-management).

    2.3. ESO Fire is a SaaS software application for NFIRS reporting (http://www.eso.com/software/fire).

3. The following Third-Party Data and/or Software may be ordered under this Exhibit: 2018 International Fire Code, 2015 International Fire Code, 2012 International Fire Code, Education (see section 3.5).

4. Third-Party Payer is responsible for the following products and Fees:

    Merced County Emergency Medical Services agrees to pay for the first year of the below subscription amount:

EHR					
	Volume	Price	Discount	Total	Fee Type
ESO EHR	7600 Incidents	$14,690.00	($0.00)	$14,690.00	Recurring
EHR CAD Integration	7600 Incidents	$2,495.00	($0.00)	$2,495.00	Recurring
EHR Setup & Online Training	3 Sessions	$1,785.00	($0.00)	$1,785.00	One-time
EHR - FIREHOUSE Interface	7600 Incidents	$995.00	($995.00)	$0.00	Recurring

Total Recurring	$	18,180.00
Total One-Time	$	1,785.00
Discounts	$	(995.00)
TOTAL	$	18,970.00

5. Customer hereby agrees to timely pay for the following products for all subsequent years according to the schedule below:

EHR					
Product	Volume	Price	Discount	Total	Fee Type
ESO EHR	7600 Incidents	$14,690.00	($0.00)	$14,690.00	Recurring
EHR CAD Integration	7600 Incidents	$2,495.00	($0.00)	$2,495.00	Recurring
EHR Setup & Online Training	3 Sessions	$1,785.00	($0.00)	$1,785.00	One-time
EHR - FIREHOUSE Interface	7600 Incidents	$995.00	($995.00)	$0.00	Recurring

Total Recurring	$	18,180.00
Total One-Time	$	1,785.00
Discounts	$	(995.00)
TOTAL	$	18,970.00

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

   6.1. Training and Training Travel Fees shall be invoiced on the Effective Date.

   6.2. During the first year, 100% of the remaining Fees shall be invoiced on the SaaS Subscription Start Date.

   6.3. 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.

<u>EXHIBIT B</u>
<u>SUPPORT SERVICES ADDENDUM</u>

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

   1.1. "Enhancement" means a modification, addition or new release of the Software that when added to the Software, materially changes its utility, efficiency, functional capability or application.

   1.2. "E-mail Support" means ability to make requests for technical support assistance by e-mail at any time concerning the use of the then-current release of Software.

   1.3. "Error" means an error in the Software, which significantly degrades performance of such Software as compared to ESO's then-published Documentation.

   1.4. "Error Correction" means the use of reasonable commercial efforts to correct Errors.

   1.5. "Fix" means the repair or replacement of object code for the Software or Documentation to remedy an Error.

   1.6. "Initial Response" means the first contact by a Support Representative after the incident has been logged and a ticket generated. This may include an automated email response depending on when the incident is first communicated.

   1.7. "Management Escalation" means, if the initial Workaround or Fix does not resolve the Error, notification of management that such Error(s) have been reported and of steps being taken to correct such Error(s).

   1.8. "Severity 1 Error" means an Error which renders the Software completely inoperative (e.g., a User cannot access the Software due to unscheduled downtime or an Outage).

   1.9. "Severity 2 Error" means an Error in which Software is still operable; however, one or more significant features or functionality are unavailable (e.g., a User cannot access a core component of the Software).

   1.1. "Severity 3 Error" means any other error that does not prevent a User from accessing a significant feature of the Software (e.g., User is experiencing latency in reports).

   1.2. "Severity 4 Error" means any error related to Documentation or a Customer Enhancement request.

   1.3. "Status Update" means if the initial Workaround or Fix cannot resolve the Error, notification of the Customer regarding the progress of the Workaround or Fix.

   1.4. "Online Support" means information available through ESO's website (www.eso.com), including frequently asked questions and bug reporting via Live Chat.

   1.5. "Support Representative" shall be ESO employee(s) or agent(s) designated to receive Error notifications from Customer, which Customer's Administrator has been unable to resolve.

   1.6. "Update" means an update or revision to Software, typically for Error Correction.

   1.7. "Upgrade" means a new version or release of Software or a particular component of Software, which improves the functionality or which adds functional capabilities to the Software and is not included in an Update. Upgrades may include Enhancements.

   1.8. "Workaround" means a change in the procedures followed or data supplied by Customer to avoid an Error without substantially impairing Customer's use of the Software.

2. **SUPPORT SERVICES.**

   2.1. Customer will provide at least one administrative employee (the "Administrator" or "Administrators") who will handle all requests for first-level support from Customer's employees with respect to the Software. Such support is intended to be the "front line" for support and information about the Software to Customer's Users. ESO will provide training, documentation, and materials to the Administrator to enable the Administrator to provide technical support to Customer's Users. The Administrator will notify a Support Representative of any Errors that the Administrator cannot resolve and assist ESO in information gathering.

   2.2. ESO will provide Support Services consisting of (a) Error Correction(s); Enhancements, Updates and Upgrades that ESO, in its discretion, makes generally available to its customers without additional charge; and (c) E-mail Support, telephone support, and Online Support. ESO may use multiple forms of communication for purposes of submitting periodic status reports to Customer, including but not limited to, messages in the Software,

messages appearing upon login to the Software or other means of broadcasting Status Update(s) to multiple customers affected by the same Error, such as a customer portal.

2.3.   ESO's support desk will be staffed with competent technical consultants who are trained in and thoroughly familiar with the Software and with Customer's applicable configuration. Telephone support and all communications will be delivered in intelligible English.

2.4.   Normal business hours for ESO's support desk are Monday through Friday 7:00 am to 7:00 pm CT. Customer will receive a call back from a Support Representative after-hours for a Severity 1 Error.

3.   **ERROR PRIORITY LEVELS.** Customer will report all Errors to ESO via e-mail (support@eso.com) or by telephone (866-766-9471, option #3). ESO shall exercise commercially reasonable efforts to correct any Error reported by Customer in accordance with the priority level reasonably assigned to such Error by ESO.

3.1.   Severity 1 Error. ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within four hours; (iii) initiate Management Escalation promptly; and (iv) provide Customer with a Status Update within four hours if ESO cannot resolve the Error within four hours.

3.2.   Severity 2 Error. ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within eight hours; (iii) initiate Management Escalation within 48 hours if unresolved; and (iv) provide Customer with a Status Update within forty-eight hours if ESO cannot resolve the Error within forty-eight hours.

3.3.   Severity 3 Error. ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within three business days; and (iii) provide Customer with a Status Update within seven calendar days if ESO cannot resolve the Error within seven calendar days.

3.4.   Severity 4 Error. ESO shall (i) provide an Initial Response within seven calendar days.

4.   **CONSULTING SERVICES.** If ESO reasonably believes that a problem reported by Customer is not due to an Error in the Software, ESO will so notify Customer. At that time, Customer may request ESO to proceed with a root cause analysis at Customer's expense as set forth herein or in a separate SOW. If ESO agrees to perform the investigation on behalf of Customer, then ESO's then-current and standard consulting rates will apply for all work performed in connection with such analysis, plus reasonable related expenses incurred. For the avoidance of doubt, Consulting Services will include customized report writing by ESO on behalf of Customer.

5.   **EXCLUSIONS.**

5.1.   ESO shall have no obligation to perform Error Corrections or otherwise provide support for: (i) Customer's repairs, maintenance or modifications to the Software (if permitted); (ii) Customer's misapplication or unauthorized use of the Software; (iii) altered or damaged Software not caused by ESO; (iv) any third-party software; (v) hardware issues; (vi) Customer's breach of the Agreement; and (vii) any other causes beyond the ESO's reasonable control.

5.2.   ESO shall have no liability for any changes in Customer's hardware or software systems that may be necessary to use the Software due to a Workaround or Fix.

5.3.   ESO is not required to perform any Error Correction unless ESO can replicate such Error on its own software and hardware or through remote access to Customer's software and hardware.

5.4.   Customer is solely responsible for its selection of hardware, and ESO shall not be responsible the performance of such hardware even if ESO makes recommendations regarding the same.

6.   **MISCELLANEOUS.** The parties acknowledge that from time-to-time ESO may update its support processes specifically addressed in this Exhibit and may do so by posting such updates to ESO's website or otherwise notifying Customer of such updates. Customer will accept updates to ESO's support procedures and any other terms in this Exhibit; provided however, that they do not materially decrease the level of Support Services that Customer will receive from ESO. THESE TERMS AND CONDITIONS DO NOT CONSTITUTE A PRODUCT WARRANTY. THIS EXHIBIT IS AN ADDITIONAL PART OF THE AGREEMENT AND DOES NOT CHANGE OR SUPERSEDE ANY TERM OF THE AGREEMENT EXCEPT TO THE EXTENT UNAMBIGUOUSLY CONTRARY THERETO.

EXHIBIT C
HIPAA BUSINESS ASSOCIATE ADDENDUM

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

Pursuant to the Master Subscription and License Agreement (the "Agreement") into which this HIPAA Business Associate Addendum (this "Addendum") has been incorporated, Business Associate may perform functions or activities involving the use and/or disclosure of PHI on behalf of the Covered Entity, and therefore, Business Associate may function as a business associate. Business Associate, therefore, agrees to the following terms and conditions.

1. Scope. This Addendum applies to and is hereby automatically incorporated into all present and future agreements and relationships, whether written, oral or implied, between Covered Entity and Business Associate, pursuant to which PHI is created, maintained, received or transmitted by Business Associate from or on behalf of Covered Entity in any form or medium whatsoever.

2. Definitions. For purposes of this Addendum, the terms used herein, unless otherwise defined, shall have the same meanings as used in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), or the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and any amendments or implementing regulations, (collectively "HIPAA Rules").

3. Compliance with Applicable Law. The parties acknowledge and agree that, beginning with the relevant effective date, Business Associate shall comply with its obligations under this Addendum and with all obligations of a business associate under HIPAA, HITECH, the HIPAA Rules, and other applicable laws and regulations, as they exist at the time this Addendum is executed and as they are amended, for so long as this Addendum is in place.

4. Permissible Use and Disclosure of PHI. Business Associate may use and disclose PHI as necessary to carry out its duties to a Covered Entity pursuant to the terms of the Agreement and as required by law. Business Associate may also use and disclose PHI (i) for its own proper management and administration, and (ii) to carry out its legal responsibilities. If Business Associate discloses Protected Health Information to a third party for either above reason, prior to making any such disclosure, Business Associate must obtain: (i) reasonable assurances from the receiving party that such PHI will be held confidential and be disclosed only as required by law or for the purposes for which it was disclosed to such receiving party; and (ii) an agreement from such receiving party to immediately notify Business Associate of any known breaches of the confidentiality of the PHI.

5. Limitations on Use and Disclosure of PHI. Business Associate shall not, and shall ensure that its directors, officers, employees, subcontractors, and agents do not, use or disclose PHI in any manner that is not permitted by the Agreement or that would violate Subpart E of 45 C.F.R. 164 ("Privacy Rule") if done by a Covered Entity. All uses and disclosures of, and requests by, Business Associate for PHI are subject to the minimum necessary rule of the Privacy Rule.

6. Required Safeguards to Protect PHI. Business Associate shall use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 ("Security Rule") with respect to electronic PHI, to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Addendum.

7. Reporting to Covered Entity. Business Associate shall report to the affected Covered Entity without unreasonable delay: (a) any use or disclosure of PHI not provided for by the Agreement of which it becomes aware; (b) any breach of unsecured PHI in accordance with 45 C.F.R. Subpart D of 45 C.F.R. 164 ("Breach Notification Rule"); and (c) any security incident of which it becomes aware. With regard to Security Incidents caused by or occurring to Business Associate, Business Associate shall cooperate with the Covered Entity's investigation, analysis, notification and mitigation activities, and except for Security Incidents caused by Covered Entity, shall be responsible for reasonable costs incurred by the Covered Entity for those activities. Notwithstanding the foregoing, Covered Entity acknowledges and shall be deemed to have received advanced notice from Business Associate that there are routine occurrences of: (i) unsuccessful attempts to penetrate computer networks or services maintained by Business Associate; and (ii) immaterial incidents such as "pinging" or "denial of services" attacks.

8. Mitigation of Harmful Effects. Business Associate agrees to mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate in violation of the requirements of the Agreement, including, but not limited to, compliance with any state law or contractual data breach requirements.

9. Agreements by Third Parties. Business Associate shall enter into an agreement with any subcontractor of Business Associate that creates, receives, maintains or transmits PHI on behalf of Business Associate. Pursuant to such agreement, the subcontractor shall agree to be bound by the same or greater restrictions, conditions, and requirements that apply to Business Associate under this Addendum with respect to such PHI.

10. Access to PHI. Within five business days of a request by a Covered Entity for access to PHI about an individual contained in a Designated Record Set, Business Associate shall make available to the Covered Entity such PHI for so long as such information is maintained by Business Associate in the Designated Record Set, as required by 45 C.F.R. 164.524. In the event any individual delivers directly to Business Associate a request for access to PHI, Business Associate shall within five (5) business days forward such request to the Covered Entity.

11. Amendment of PHI. Within five business days of receipt of a request from a Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), Business Associate shall provide such information to the Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. 164.526. In the event any individual delivers directly to Business Associate a request for amendment to PHI, Business Associate shall within five business days forward such request to the Covered Entity.

12. Documentation of Disclosures. Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528 and HITECH.

13. <u>Accounting of Disclosures</u>. Within five business days of notice by a Covered Entity to Business Associate that it has received a request for an accounting of disclosures of PHI, Business Associate shall make available to a Covered Entity information to permit the Covered Entity to respond to the request for an accounting of disclosures of PHI, as required by 45 C.F.R. 164.528 and HITECH.

14. <u>Other Obligations</u>. To the extent that Business Associate is to carry out one or more of a Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with such requirements that apply to the Covered Entity in the performance of such obligations.

15. <u>Judicial and Administrative Proceedings</u>. In the event Business Associate receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, the affected Covered Entity shall have the right to control Business Associate's response to such request, provided that, such control does not have an adverse impact on Business Associate's compliance with existing laws. Business Associate shall notify the Covered Entity of the request as soon as reasonably practicable, but in any event within seven business days of receipt of such request.

16. <u>Availability of Books and Records</u>. Business Associate hereby agrees to make its internal practices, books, and records available to the Secretary of the Department of Health and Human Services for purposes of determining compliance with the HIPAA Rules.

17. <u>Breach of Contract by Business Associate</u>. In addition to any other rights a party may have in the Agreement, this Addendum or by operation of law or in equity, either party may: i) immediately terminate the Agreement if the other party has violated a material term of this Addendum; or ii) at the non-breaching party's option, permit the breaching party to cure or end any such violation within the time specified by the non-breaching party. The non-breaching party's option to have cured a breach of this Addendum shall not be construed as a waiver of any other rights the non-breaching party has in the Agreement, this Addendum or by operation of law or in equity.

18. <u>Effect of Termination of Agreement</u>. Upon the termination of the Agreement or this Addendum for any reason, Business Associate shall return to a Covered Entity or, at the Covered Entity's direction, destroy all PHI received from the Covered Entity that Business Associate maintains in any form, recorded on any medium, or stored in any storage system. This provision shall apply to PHI that is in the possession of Business Associate, subcontractors, and agents of Business Associate. Business Associate shall retain no copies of the PHI. Business Associate shall remain bound by the provisions of this Addendum, even after termination of the Agreement or Addendum, until such time as all PHI has been returned or otherwise destroyed as provided in this Section. For the avoidance of doubt, de-identified Customer Data shall not be subject to this provision.

19. <u>Injunctive Relief</u>. Business Associate stipulates that its unauthorized use or disclosure of PHI while performing services pursuant to this Addendum would cause irreparable harm to a Covered Entity, and in such event, the Covered Entity shall be entitled to institute proceedings in any court of competent jurisdiction to obtain damages and injunctive relief.

20. <u>Owner of PHI</u>. Under no circumstances shall Business Associate be deemed in any respect to be the owner of any PHI created or received by Business Associate on behalf of a Covered Entity.

21. <u>Safeguards and Appropriate Use of Protected Health Information</u>. Covered Entity is responsible for implementing appropriate privacy and security safeguards to protect its PHI in compliance with HIPAA. Without limitation, it is Covered Entity's obligation to:

21.1. Not include PHI in information Covered Entity submits to technical support personnel through a technical support request or to community support forums. In addition, Business Associate does not act as, or have the obligations of a Business Associate under the HIPAA Rules with respect to Customer Data once it is sent to or from Covered Entity outside ESO's Software over the public Internet; and

21.2. Implement privacy and security safeguards in the systems, applications, and software Covered Entity controls, configures and connects to ESO's Software.

22. <u>Third Party Rights</u>. The terms of this Addendum do not grant any rights to any parties other than Business Associate and the Covered Entity.

23. <u>Signatures</u>. The signatures to the Agreement (or the document evidencing the parties' adoption thereof) indicate agreement hereto and shall be deemed signatures hereof, whether manual, electronic or facsimile.

Report Prepared by: Janet German, Management Analyst, Fire Department

..Title

SUBJECT: Approval of the Purchase of ESO Solutions, Inc. Records Management System Software Via an Addendum to the Master Subscription and License Agreement for the "Electronic Patient Care Records" System, Approval to Waive the Competitive Bidding Requirement in Conjunction with the Previously Approved for Information Only Agreement Titled "Electronic Patient Care Records", Authorization for Three Additional One-Year Renewals, and Approval to Terminate the Existing Agreement for the FireHouse Records Management System

REPORT IN BRIEF

Considers authorizing the purchase of ESO Solutions, Inc. records management system software via an Addendum to the Master Subscription and License Agreement for the "electronic Patient Care Records" system with an initial cost of $12,705, waiving the competitive bidding requirement in conjunction with the previously approved for information only agreement titled "electronic Patient Care Records" at a cost of $18,970 (cost borne by the County of Merced), authorizing three additional one-year renewals, and terminating the existing agreement for the FireHouse records management system.

RECOMMENDATION

City Council – Adopt a motion:

A. Authorizing the City Manager to terminate the existing software subscription with ESO Solutions, Inc.'s agreement for the FireHouse records management system, City Contract No. 300980;

B. Authorizing the City Manager to negotiate and execute an addendum to the Master Subscription and License agreement with ESO Solutions, Inc. at an initial cost of $12,705 for the purchase of ESO's records management system (Fire incidents CAD Integration, fire incidents, inspections, properties, activities and permits), with three additional one-year renewals, for a total amount not to exceed $64,792.87 (including a 10% contingency) over a three year period, with future funding contingent upon City Council's budget approval;

C. Authorizing the City Manager to negotiate and execute the software subscription agreement with ESO Solutions, Inc. for the 2nd year's cost of $19,539.10 for the records management system (electronic Patient Care Reporting), with three additional one-year renewal options, for a total amount not to exceed $89,918.73 (including a 10% contingency) over a three year period, with future funding contingent upon City Council's budget approval; and,

D. Authorizing the waiving of the competitive bidding requirement in order to maintain standardization of software and the sole source provider of the Fire Department's

current records management software, pursuant to Merced Municipal Code, Article 3.04.210 – Exemptions from Competitive Bidding;

E. Authorizing the Finance Officer to make the necessary budget adjustments.

..Body
ALTERNATIVES
1. Approve, as recommended by staff; or,
2. Approve, subject to other than recommended gy staff; or,
3. Deny; or,
4. Refer to staff for reconsideration of specific items; or,
5. Continue to a future meeting.

AUTHORITY
Merced Municipal Code
- The Charter, Article II-Power of City, Sec. 200-Powers
- The Charter, Article XI-Fiscal Administration, Section 1105-Budget-Appropriations
- Title 3-Revenue and Finance-Chapter 3.04-Purchasing System-Article 3.04.210 – Exemptions from Competitive Bidding

California Health and Safety Code §13110.5

CITY COUNCIL PRIORITIES
Public Safety as provided for in the FY 21/22 budget priorities.

DISCUSSION
Background:

California Health and Safety Code (HSC) §13110.5 mandates that each fire department operated by the state, a city, city and county, fire protection district, organized fire company, or other public or private entity which provides fire protection, shall furnish information and data to the Office of the State Fire Marshal relating to each fire which occurs within its area of jurisdiction.

The Local Emergency Medical Services Authority (LEMSA) participation in the Statewide Emergency Medical Services data system, California Emergency Medical Services Information System (CEMSIS), is required consistent with HSC §1797.102 in providing the Emergency Medical Service's Authority with information necessary to assess the effectiveness of emergency medical services in each EMS area or the system's service area. The EMS Authority tasks the LEMSA's with the extraction and submission of core measure reports based on their local databases.

To meet the above endeavors, the Merced Fire Department has continuously used FireHouse Software since 2003, which is owned by ESO Solutions, LLC, hereinafter referred to as ESO. In 2020, to comply with HSC §1797.227 which requires all Merced

County EMS providers to submit their EMS data to the Merced County EMS Agency for California State CEMSIS & National Emergency Medical Services Information System (NEMSIS) reporting, the County EMS Agency implemented a regional EMS electronic Patient Care Report (ePCR) system and selected ESO as the software vendor. Furthermore, utilizing "EMS System Enhancement Trust" funds, the first-year cost ($18,970) of the ePCR software was be borne by the County and the city would be responsible for all future costs. Consequently, the city entered into a software subscription agreement with ESO and City Council was apprised of the information-only contract on 03/01/21. The agreement renews annually, unless terminated by either party with a minimum of 60-day notice.

FireHouse Software was built on FoxPro's software platform and then later Visual FoxPro, and support for these platforms ceased in 2015. Consequently, ESO or any vendor cannot continue development of FireHouse Software without support of the underlying development and database platform. Additionally, in 2018, ESO announced that they would be phasing out FireHouse Software and the new RMS was released in June, 2020. Staff is recommending the replacement/update of the existing RMS system, due to the end of life of the existing FireHouse system.

City Council Prior Actions

Date	Council Action	Amount	Cumulative Agreement with ESO Solutions, Inc.	Term	Agreement No.	Agreement Purpose	Comments
07/01/19	Information Only	$9,158.38	$9,158.38	03/01/19-02/29/20	300980	Records Management System	Year 1 of Agreement
01/31/20	N/A	$9,433.13	$18,591.51	03/01/20-02/28/21	300980	Records Management System	Year 2 of Agreement
01/30/21	N/A	$9,716.16	$28,307.67	03/01/21-02/28/22	300980	Records Management System	Year 3 of Agreement
03/01/21	Information Only	$18,970.00	[1]$28,307.67	05/24/21-04/23/22	301498	electronic Patient Care Reporting	Year 1 of Agreement

[1]The County of Merced directly paid ESO Solutions, Inc. for the first-year cost and the city had no expense for the ePCR system for the first year.

Justification for Waiving of Competitive Bidding Process and Standardization
ESO is the only source for annual maintenance of the ESO's ePCR and software that was selected and paid for by the County of Merced. The sole source letter is included as an attachment and applies to all of ESO's products.

Since 2003, the fire department has had one vendor to provide ePCR, RMS, and the CAD monitor, therefore no dual entry of data was necessary. In other words, if patient data was entered into the ePCR system, it would automatically update in the RMS. If a different vendor is selected for RMS, then firefighters will need to enter the information twice, once into the ePCR system and a second time into the RMS. If ESO is selected for RMS, then the interactions of CAD, ePCR, and the RMS will continue to seamlessly interface and will allow interoperability between systems and other agencies within the County as well. Put simply our ePCR and RMS software will contain modules that speak to each other to minimize data entry, searching, and other time-wasting activities. In summary, standardization is of utmost importance to avoid duplication of effort by inputting the same information multiple times.

Should the City Council approve the purchase of the ESO's RMS at a first-year cost of $12,705 then Agreement No. 300980 for ESO's FireHouse Records Management System will be terminated, with Council's approval.

ESO will then provide software maintenance for all of the Fire Department's RMS modules: Fire incidents CAD Integration, fire incidents, inspections, properties, activities, permits, and ePCR under an addendum to the existing Master Subscription and License Agreement. The RMS and ePCR will both have one-year terms with an annual 3% uplift on renewal. The contract auto renews annually unless either party cancels within a stipulated time frame. The Fire Department, will return to Council prior to four years from the contract date to apprise council and seek their approval prior to auto renewing the contract prior to renewal in Fiscal Year 25/26.
The projected financial impact for the systems is reflected below:

Fiscal Year	RMS Amount	ePCR Amount	RMS & ePCR Total Amount	Cumulative Agreement with ESO Solutions, Inc.	Cumulative Agreement with ESO Solutions, Inc. (Including 10% Contingency)
21/22	$12,705.00	$19,539.10	$ 32,244.10	$ 32,244.10	$ 35,468.51
22/23	$14,946.33	$20,125.27	$ 35,071.60	$ 68,315.70	$ 72,947.27
23/24	$15,394.72	$20,729.03	$ 36,123.75	$103,439.45	$113,783.40
24/25	$15,856.56	$21,350.90	$ 37,207.46	$140,646.91	$154,711.60
TOTAL	$58,902.61	$81,744.30	$140,646.91	$140,646.91	$154,711.60

IMPACT ON CITY RESOURCES
The contract to be awarded to ESO is for an amount not to exceed $154,711.60 (including 10% contingency) and staff will return to City Council with a request to terminate or renew the Master Subscription and License Agreement prior to Fiscal Year 25/26. Future year funding for this agreement is contingent upon City Council budget approval.

ATTACHMENTS
1. ePCR Master Subscription and License Agreement between ESO and the City of Merced
2. ePCR Services Payment Agreement between ESO and the County of Merced
3. ESO Sole Source Letter

<u>EXHIBIT B</u>
<u>SUPPORT SERVICES ADDENDUM</u>

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

   1.1.   "Enhancement" means a modification, addition or new release of the Software that when added to the Software, materially changes its utility, efficiency, functional capability or application.

   1.2.   "E-mail Support" means ability to make requests for technical support assistance by e-mail at any time concerning the use of the then-current release of Software.

   1.3.   "Error" means an error in the Software, which significantly degrades performance of such Software as compared to ESO's then-published Documentation.

   1.4.   "Error Correction" means the use of reasonable commercial efforts to correct Errors.

   1.5.   "Fix" means the repair or replacement of object code for the Software or Documentation to remedy an Error.

   1.6.   "Initial Response" means the first contact by a Support Representative after the incident has been logged and a ticket generated. This may include an automated email response depending on when the incident is first communicated.

   1.7.   "Management Escalation" means, if the initial Workaround or Fix does not resolve the Error, notification of management that such Error(s) have been reported and of steps being taken to correct such Error(s).

   1.8.   "Severity 1 Error" means an Error which renders the Software completely inoperative (e.g., a User cannot access the Software due to unscheduled downtime or an Outage).

   1.9.   "Severity 2 Error" means an Error in which Software is still operable; however, one or more significant features or functionality are unavailable (e.g., a User cannot access a core component of the Software)

   1.1.   "Severity 3 Error" means any other error that does not prevent a User from accessing a significant feature of the Software (e.g., User is experiencing latency in reports).

   1.2.   "Severity 4 Error" means any error related to Documentation or a Customer Enhancement request.

   1.3.   "Status Update" means if the initial Workaround or Fix cannot resolve the Error, notification of the Customer regarding the progress of the Workaround or Fix.

   1.4   "Online Support" means information available through ESO's website (www.eso.com), including frequently asked questions and bug reporting via Live Chat.

   1.5.   "Support Representative" shall be ESO employee(s) or agent(s) designated to receive Error notifications from Customer, which Customer's Administrator has been unable to resolve.

   1.6.   "Update" means an update or revision to Software, typically for Error Correction.

   1.7.   "Upgrade" means a new version or release of Software or a particular component of Software, which improves the functionality or which adds functional capabilities to the Software and is not included in an Update. Upgrades may include Enhancements.

   1.8.   "Workaround" means a change in the procedures followed or data supplied by Customer to avoid an Error without substantially impairing Customer's use of the Software.

2.   **SUPPORT SERVICES.**

   2.1.   Customer will provide at least one administrative employee (the "Administrator" or "Administrators") who will handle all requests for first-level support from Customer's employees with respect to the Software. Such support is intended to be the "front line" for support and information about the Software to Customer's Users. ESO will provide training, documentation, and materials to the Administrator to enable the Administrator to provide technical support to Customer's Users. The Administrator will notify a Support Representative of any Errors that the Administrator cannot resolve and assist ESO in information gathering.

   2.2.   ESO will provide Support Services consisting of (a) Error Correction(s); Enhancements, Updates and Upgrades that ESO, in its discretion, makes generally available to its customers without additional charge; and (c) E-mail Support, telephone support, and Online Support. ESO may use multiple forms of communication for purposes of submitting periodic status reports to Customer, including but not limited to, messages in the Software.

messages appearing upon login to the Software or other means of broadcasting Status Update(s) to multiple customers affected by the same Error, such as a customer portal.

2.3.   ESO's support desk will be staffed with competent technical consultants who are trained in and thoroughly familiar with the Software and with Customer's applicable configuration. Telephone support and all communications will be delivered in intelligible English.

2.4.   Normal business hours for ESO's support desk are Monday through Friday 7:00 am to 7:00 pm CT. Customer will receive a call back from a Support Representative after-hours for a Severity 1 Error.

3.   **ERROR PRIORITY LEVELS.** Customer will report all Errors to ESO via e-mail (support@eso.com) or by telephone (866-766-9471, option #3). ESO shall exercise commercially reasonable efforts to correct any Error reported by Customer in accordance with the priority level reasonably assigned to such Error by ESO.

3.1.   Severity 1 Error. ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within four hours; (iii) initiate Management Escalation promptly; and (iv) provide Customer with a Status Update within four hours if ESO cannot resolve the Error within four hours.

3.2.   Severity 2 Error. ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within eight hours; (iii) initiate Management Escalation within 48 hours if unresolved; and (iv) provide Customer with a Status Update within forty-eight hours if ESO cannot resolve the Error within forty-eight hours.

3.3.   Severity 3 Error. ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within three business days; and (iii) provide Customer with a Status Update within seven calendar days if ESO cannot resolve the Error within seven calendar days.

3.4.   Severity 4 Error. ESO shall (i) provide an Initial Response within seven calendar days.

4.   **CONSULTING SERVICES.** If ESO reasonably believes that a problem reported by Customer is not due to an Error in the Software, ESO will so notify Customer. At that time, Customer may request ESO to proceed with a root cause analysis at Customer's expense as set forth herein or in a separate SOW. If ESO agrees to perform the investigation on behalf of Customer, then ESO's then-current and standard consulting rates will apply for all work performed in connection with such analysis, plus reasonable related expenses incurred. For the avoidance of doubt, Consulting Services will include customized report writing by ESO on behalf of Customer.

5.   **EXCLUSIONS.**

5.1.   ESO shall have no obligation to perform Error Corrections or otherwise provide support for: (i) Customer's repairs, maintenance or modifications to the Software (if permitted); (ii) Customer's misapplication or unauthorized use of the Software; (iii) altered or damaged Software not caused by ESO; (iv) any third-party software; (v) hardware issues; (vi) Customer's breach of the Agreement; and (vii) any other causes beyond the ESO's reasonable control.

5.2.   ESO shall have no liability for any changes in Customer's hardware or software systems that may be necessary to use the Software due to a Workaround or Fix.

5.3.   ESO is not required to perform any Error Correction unless ESO can replicate such Error on its own software and hardware or through remote access to Customer's software and hardware.

5.4.   Customer is solely responsible for its selection of hardware, and ESO shall not be responsible the performance of such hardware even if ESO makes recommendations regarding the same.

6.   **MISCELLANEOUS.** The parties acknowledge that from time-to-time ESO may update its support processes specifically addressed in this Exhibit and may do so by posting such updates to ESO's website or otherwise notifying Customer of such updates. Customer will accept updates to ESO's support procedures and any other terms in this Exhibit; provided however, that they do not materially decrease the level of Support Services that Customer will receive from ESO. THESE TERMS AND CONDITIONS DO NOT CONSTITUTE A PRODUCT WARRANTY. THIS EXHIBIT IS AN ADDITIONAL PART OF THE AGREEMENT AND DOES NOT CHANGE OR SUPERSEDE ANY TERM OF THE AGREEMENT EXCEPT TO THE EXTENT UNAMBIGUOUSLY CONTRARY THERETO.

<u>EXHIBIT C</u>
<u>HIPAA BUSINESS ASSOCIATE ADDENDUM</u>

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

Pursuant to the Master Subscription and License Agreement (the "Agreement") into which this HIPAA Business Associate Addendum (this "Addendum") has been incorporated, Business Associate may perform functions or activities involving the use and/or disclosure of PHI on behalf of the Covered Entity, and therefore, Business Associate may function as a business associate. Business Associate, therefore, agrees to the following terms and conditions.

1. <u>Scope</u>. This Addendum applies to and is hereby automatically incorporated into all present and future agreements and relationships, whether written, oral or implied, between Covered Entity and Business Associate, pursuant to which PHI is created, maintained, received or transmitted by Business Associate from or on behalf of Covered Entity in any form or medium whatsoever.

2. <u>Definitions</u>. For purposes of this Addendum, the terms used herein, unless otherwise defined, shall have the same meanings as used in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), or the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and any amendments or implementing regulations, (collectively "HIPAA Rules").

3. <u>Compliance with Applicable Law</u>. The parties acknowledge and agree that, beginning with the relevant effective date, Business Associate shall comply with its obligations under this Addendum and with all obligations of a business associate under HIPAA, HITECH, the HIPAA Rules, and other applicable laws and regulations, as they exist at the time this Addendum is executed and as they are amended, for so long as this Addendum is in place.

4. <u>Permissible Use and Disclosure of PHI</u>. Business Associate may use and disclose PHI as necessary to carry out its duties to a Covered Entity pursuant to the terms of the Agreement and as required by law. Business Associate may also use and disclose PHI (i) for its own proper management and administration, and (ii) to carry out its legal responsibilities. If Business Associate discloses Protected Health Information to a third party for either above reason, prior to making any such disclosure, Business Associate must obtain: (i) reasonable assurances from the receiving party that such PHI will be held confidential and be disclosed only as required by law or for the purposes for which it was disclosed to such receiving party; and (ii) an agreement from such receiving party to immediately notify Business Associate of any known breaches of the confidentiality of the PHI.

5. <u>Limitations on Use and Disclosure of PHI</u>. Business Associate shall not, and shall ensure that its directors, officers, employees, subcontractors, and agents do not, use or disclose PHI in any manner that is not permitted by the Agreement or that would violate Subpart E of 45 C.F.R. 164 ("Privacy Rule") if done by a Covered Entity. All uses and disclosures of, and requests by, Business Associate for PHI are subject to the minimum necessary rule of the Privacy Rule.

6. <u>Required Safeguards to Protect PHI</u>. Business Associate shall use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 ("Security Rule") with respect to electronic PHI, to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Addendum.

7. <u>Reporting to Covered Entity</u>. Business Associate shall report to the affected Covered Entity without unreasonable delay: (a) any use or disclosure of PHI not provided for by the Agreement of which it becomes aware; (b) any breach of unsecured PHI in accordance with 45 C.F.R. Subpart D of 45 C.F.R. 164 ("Breach Notification Rule"); and (c) any security incident of which it becomes aware. With regard to Security Incidents caused by or occurring to Business Associate, Business Associate shall cooperate with the Covered Entity's investigation, analysis, notification and mitigation activities, and except for Security Incidents caused by Covered Entity, shall be responsible for reasonable costs incurred by the Covered Entity for those activities. Notwithstanding the foregoing, Covered Entity acknowledges and shall be deemed to have received advanced notice from Business Associate that there are routine occurrences of: (i) unsuccessful attempts to penetrate computer networks or services maintained by Business Associate; and (ii) immaterial incidents such as "pinging" or "denial of services" attacks.

8. <u>Mitigation of Harmful Effects</u>. Business Associate agrees to mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate in violation of the requirements of the Agreement, including, but not limited to, compliance with any state law or contractual data breach requirements.

9. <u>Agreements by Third Parties</u>. Business Associate shall enter into an agreement with any subcontractor of Business Associate that creates, receives, maintains or transmits PHI on behalf of Business Associate. Pursuant to such agreement, the subcontractor shall agree to be bound by the same or greater restrictions, conditions, and requirements that apply to Business Associate under this Addendum with respect to such PHI.

10. <u>Access to PHI</u>. Within five business days of a request by a Covered Entity for access to PHI about an individual contained in a Designated Record Set, Business Associate shall make available to the Covered Entity such PHI for so long as such information is maintained by Business Associate in the Designated Record Set, as required by 45 C.F.R. 164.524. In the event any individual delivers directly to Business Associate a request for access to PHI, Business Associate shall within five (5) business days forward such request to the Covered Entity.

11. <u>Amendment of PHI</u>. Within five business days of receipt of a request from a Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), Business Associate shall provide such information to the Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. 164.526. In the event any individual delivers directly to Business Associate a request for amendment to PHI, Business Associate shall within five business days forward such request to the Covered Entity.

12. <u>Documentation of Disclosures</u>. Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528 and HITECH.

13. **Accounting of Disclosures.** Within five business days of notice by a Covered Entity to Business Associate that it has received a request for an accounting of disclosures of PHI, Business Associate shall make available to a Covered Entity information to permit the Covered Entity to respond to the request for an accounting of disclosures of PHI, as required by 45 C.F.R. 164.528 and HITECH.

14. **Other Obligations.** To the extent that Business Associate is to carry out one or more of a Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with such requirements that apply to the Covered Entity in the performance of such obligations.

15. **Judicial and Administrative Proceedings.** In the event Business Associate receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, the affected Covered Entity shall have the right to control Business Associate's response to such request, provided that, such control does not have an adverse impact on Business Associate's compliance with existing laws. Business Associate shall notify the Covered Entity of the request as soon as reasonably practicable, but in any event within seven business days of receipt of such request.

16. **Availability of Books and Records.** Business Associate hereby agrees to make its internal practices, books, and records available to the Secretary of the Department of Health and Human Services for purposes of determining compliance with the HIPAA Rules.

17. **Breach of Contract by Business Associate.** In addition to any other rights a party may have in the Agreement, this Addendum or by operation of law or in equity, either party may: i) immediately terminate the Agreement if the other party has violated a material term of this Addendum; or ii) at the non-breaching party's option, permit the breaching party to cure or end any such violation within the time specified by the non-breaching party. The non-breaching party's option to have cured a breach of this Addendum shall not be construed as a waiver of any other rights the non-breaching party has in the Agreement, this Addendum or by operation of law or in equity.

18. **Effect of Termination of Agreement.** Upon the termination of the Agreement or this Addendum for any reason, Business Associate shall return to a Covered Entity or, at the Covered Entity's direction, destroy all PHI received from the Covered Entity that Business Associate maintains in any form, recorded on any medium, or stored in any storage system. This provision shall apply to PHI that is in the possession of Business Associate, subcontractors, and agents of Business Associate. Business Associate shall retain no copies of the PHI. Business Associate shall remain bound by the provisions of this Addendum, even after termination of the Agreement or Addendum, until such time as all PHI has been returned or otherwise destroyed as provided in this Section. For the avoidance of doubt, de-identified Customer Data shall not be subject to this provision.

19. **Injunctive Relief.** Business Associate stipulates that its unauthorized use or disclosure of PHI while performing services pursuant to this Addendum would cause irreparable harm to a Covered Entity, and in such event, the Covered Entity shall be entitled to institute proceedings in any court of competent jurisdiction to obtain damages and injunctive relief.

20. **Owner of PHI.** Under no circumstances shall Business Associate be deemed in any respect to be the owner of any PHI created or received by Business Associate on behalf of a Covered Entity.

21. **Safeguards and Appropriate Use of Protected Health Information.** Covered Entity is responsible for implementing appropriate privacy and security safeguards to protect its PHI in compliance with HIPAA. Without limitation, it is Covered Entity's obligation to:

   21.1. Not include PHI in information Covered Entity submits to technical support personnel through a technical support request or to community support forums. In addition, Business Associate does not act as, or have the obligations of a Business Associate under the HIPAA Rules with respect to Customer Data once it is sent to or from Covered Entity outside ESO's Software over the public Internet; and

   21.2. Implement privacy and security safeguards in the systems, applications, and software Covered Entity controls, configures and connects to ESO's Software.

22. **Third Party Rights.** The terms of this Addendum do not grant any rights to any parties other than Business Associate and the Covered Entity.

23. **Signatures.** The signatures to the Agreement (or the document evidencing the parties' adoption thereof) indicate agreement hereto and shall be deemed signatures hereof, whether manual, electronic or facsimile.

eso

CUSTOMER CONTACT

Customer Name	Merced Fire Department
	Casey Wilson
Email	wilsonc@cityofmerced.org
Phone	(209)388-8835

BILLING CONTACT

Payor	Merced Fire Department	Address	Accounts Payable
Name	Janet German		Merced CA, 95340
Email	germanj@cityofmerced.org	Billing Frequency	Annual
Phone	209-385-6891	Initial Term	12 months

Fire

Product	Volume	Price	Discount	Total	Fee Type
Fire Setup & Online Training	3 Sessions	$1,785.00	($0.00)	$1,785.00	One-time
Fire Incidents CAD Integration	7600 Incidents	$2,495.00	($2,495.00)	$0.00	Recurring
ESO Fire Incidents	5 Stations	$5,275.00	($0.00)	$5,275.00	Recurring
ESO Inspections	5 Stations	$2,375.00	($0.00)	$2,375.00	Recurring
ESO Properties	5 Stations	$2,075.00	($0.00)	$2,075.00	Recurring
Fire Incidents NFIRS Data Import	7600 Incidents	$4,995.00	($4,995.00)	$0.00	One-time
Properties/Inspections Data Import	5 Stations	$1,775.00	($1,775.00)	$0.00	One-time
ESO Activities - Fire and Fire/EMS Agencies	5 Stations	$1,195.00	($0.00)	$1,195.00	Recurring
ESO Permits	5 Stations	$1,096.00	($1,096.00)	$0.00	Recurring

Total Recurring Fees	$	14,511.00
Total One-Time Fees	$	8,555.00
Discounts	$	(10,361.00)
TOTAL FEES	$	12,705.00

eso

Merced Fire Department

Jurl Quinto, ACTING CITY MGR
[Signature]

Stephanie Dietz
[Print Name]

City Manager
[Title]

Sept 9, 2021
[Today's Date]
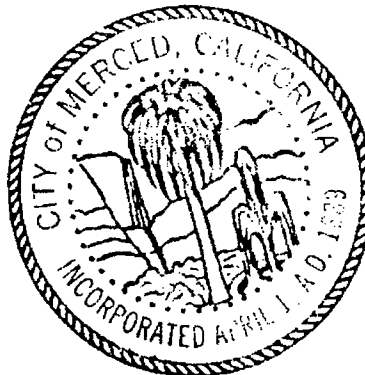
For , the following payment terms apply:
Fees are invoiced at the Billing Frequency 15 days after the Effective Date, with recurring fees due on the anniversary.

APPROVED AS TO FORM:

John B. Goulart   7-1-21
JOHN B. GOULART   Date
Senior Deputy City Attorney

ATTEST:
CITY CLERK

BY_____
Assistant/Deputy City Clerk

eso

Quote Date: 06/18/2021
Customer Name: Merced Fire Department
Quote #: Q-40364
Quote Expiration date: 09/30/2021
ESO Account Manager: Todd Long

Merced Fire Department

_____
[Signature]

DEREK PARKER
[Print Name]

FIRE CHIEF
[Title]

8/16/21
[Today's Date]

ESO Solutions, Inc.

_____
Signature

Robert Munden_____

Name

Chief Legal & Compliance Officer
_____
Title

August 2, 2021
_____
Date

For , the following payment terms apply:
Fees are invoiced at the Billing Frequency 15 days after the Effective Date, with recurring fees due
on the anniversary.

APPROVED AS TO FORM:

_____ 7-1-21
JOHN B. GOULART   Date
Senior Deputy City Attorney

111

eso

Product	Description

EXHIBIT B
SUPPORT SERVICES ADDENDUM

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

   1.1. "Enhancement" means a modification, addition or new release of the Software that when added to the Software, materially changes its utility, efficiency, functional capability or application.

   1.2. "E-mail Support" means ability to make requests for technical support assistance by e-mail at any time concerning the use of the then-current release of Software.

   1.3. "Error" means an error in the Software, which significantly degrades performance of such Software as compared to ESO's then-published Documentation

   1.4. "Error Correction" means the use of reasonable commercial efforts to correct Errors.

   1.5. "Fix" means the repair or replacement of object code for the Software or Documentation to remedy an Error.

   1.6. "Initial Response" means the first contact by a Support Representative after the incident has been logged and a ticket generated. This may include an automated email response depending on when the incident is first communicated

   1.7. "Management Escalation" means, if the initial Workaround or Fix does not resolve the Error, notification of management that such Error(s) have been reported and of steps being taken to correct such Error(s).

   1.8. "Severity 1 Error" means an Error which renders the Software completely inoperative (e.g., a User cannot access the Software due to unscheduled downtime or an Outage)

   1.9. "Severity 2 Error" means an Error in which Software is still operable, however, one or more significant features or functionality are unavailable (e.g., a User cannot access a core component of the Software)

   1.1. "Severity 3 Error" means any other error that does not prevent a User from accessing a significant feature of the Software (e.g., User is experiencing latency in reports)

   1.2. "Severity 4 Error" means any error related to Documentation or a Customer Enhancement request.

   1.3. "Status Update" means if the initial Workaround or Fix cannot resolve the Error, notification of the Customer regarding the progress of the Workaround or Fix.

   1.4. "Online Support" means information available through ESO's website (www.eso.com), including frequently asked questions and bug reporting via Live Chat

   1.5. "Support Representative" shall be ESO employee(s) or agent(s) designated to receive Error notifications from Customer, which Customer's Administrator has been unable to resolve

   1.6. "Update" means an update or revision to Software, typically for Error Correction

   1.7. "Upgrade" means a new version or release of Software or a particular component of Software, which improves the functionality or which adds functional capabilities to the Software and is not included in an Update. Upgrades may include Enhancements.

   1.8. "Workaround" means a change in the procedures followed or data supplied by Customer to avoid an Error without substantially impairing Customer's use of the Software

2. **SUPPORT SERVICES.**

   2.1. Customer will provide at least one administrative employee (the "Administrator" or "Administrators") who will handle all requests for first-level support from Customer's employees with respect to the Software. Such support is intended to be the "front line" for support and information about the Software to Customer's Users. ESO will provide training, documentation, and materials to the Administrator to enable the Administrator to provide technical support to Customer's Users. The Administrator will notify a Support Representative of any Errors that the Administrator cannot resolve and assist ESO in information gathering.

   2.2. ESO will provide Support Services consisting of (a) Error Correction(s); Enhancements, Updates and Upgrades that ESO, in its discretion, makes generally available to its customers without additional charge, and (c) E-mail Support, telephone support, and Online Support. ESO may use multiple forms of communication for purposes of submitting periodic status reports to Customer, including but not limited to, messages in the Software,

messages appearing upon login to the Software or other means of broadcasting Status Update(s) to multiple customers affected by the same Error, such as a customer portal.

2.3   ESO's support desk will be staffed with competent technical consultants who are trained in and thoroughly familiar with the Software and with Customer's applicable configuration. Telephone support and all communications will be delivered in intelligible English.

2.4.   Normal business hours for ESO's support desk are Monday through Friday 7:00 am to 7:00 pm CT. Customer will receive a call back from a Support Representative after-hours for a Severity 1 Error.

3   **ERROR PRIORITY LEVELS.** Customer will report all Errors to ESO via e-mail (support@eso.com) or by telephone (866-766-9471, option #3). ESO shall exercise commercially reasonable efforts to correct any Error reported by Customer in accordance with the priority level reasonably assigned to such Error by ESO.

3.1   Severity 1 Error. ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within four hours; (iii) initiate Management Escalation promptly; and (iv) provide Customer with a Status Update within four hours if ESO cannot resolve the Error within four hours.

3.2.   Severity 2 Error. ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within eight hours; (iii) initiate Management Escalation within 48 hours if unresolved; and (iv) provide Customer with a Status Update within forty-eight hours if ESO cannot resolve the Error within forty-eight hours.

3.3.   Severity 3 Error. ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within three business days; and (iii) provide Customer with a Status Update within seven calendar days if ESO cannot resolve the Error within seven calendar days.

3.4   Severity 4 Error. ESO shall (i) provide an Initial Response within seven calendar days.

4   **CONSULTING SERVICES.** If ESO reasonably believes that a problem reported by Customer is not due to an Error in the Software, ESO will so notify Customer. At that time, Customer may request ESO to proceed with a root cause analysis at Customer's expense as set forth herein or in a separate SOW. If ESO agrees to perform the investigation on behalf of Customer, then ESO's then-current and standard consulting rates will apply for all work performed in connection with such analysis, plus reasonable related expenses incurred. For the avoidance of doubt, Consulting Services will include customized report writing by ESO on behalf of Customer.

5   **EXCLUSIONS.**

5.1   ESO shall have no obligation to perform Error Corrections or otherwise provide support for: (i) Customer's repairs, maintenance or modifications to the Software (if permitted); (ii) Customer's misapplication or unauthorized use of the Software; (iii) altered or damaged Software not caused by ESO; (iv) any third-party software; (v) hardware issues; (vi) Customer's breach of the Agreement; and (vii) any other causes beyond the ESO's reasonable control.

5.2   ESO shall have no liability for any changes in Customer's hardware or software systems that may be necessary to use the Software due to a Workaround or Fix.

5.3   ESO is not required to perform any Error Correction unless ESO can replicate such Error on its own software and hardware or through remote access to Customer's software and hardware.

5.4   Customer is solely responsible for its selection of hardware, and ESO shall not be responsible the performance of such hardware even if ESO makes recommendations regarding the same.

6.   **MISCELLANEOUS.** The parties acknowledge that from time-to-time ESO may update its support processes specifically addressed in this Exhibit and may do so by posting such updates to ESO's website or otherwise notifying Customer of such updates. Customer will accept updates to ESO's support procedures and any other terms in this Exhibit; provided however, that they do not materially decrease the level of Support Services that Customer will receive from ESO. THESE TERMS AND CONDITIONS DO NOT CONSTITUTE A PRODUCT WARRANTY. THIS EXHIBIT IS AN ADDITIONAL PART OF THE AGREEMENT AND DOES NOT CHANGE OR SUPERSEDE ANY TERM OF THE AGREEMENT EXCEPT TO THE EXTENT UNAMBIGUOUSLY CONTRARY THERETO.

EXHIBIT C
HIPAA BUSINESS ASSOCIATE ADDENDUM

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

Pursuant to the Master Subscription and License Agreement (the "Agreement") into which this HIPAA Business Associate Addendum (this "Addendum") has been incorporated, Business Associate may perform functions or activities involving the use and/or disclosure of PHI on behalf of the Covered Entity, and therefore, Business Associate may function as a business associate. Business Associate, therefore, agrees to the following terms and conditions.

1. **Scope.** This Addendum applies to and is hereby automatically incorporated into all present and future agreements and relationships, whether written, oral or implied, between Covered Entity and Business Associate, pursuant to which PHI is created, maintained, received or transmitted by Business Associate from or on behalf of Covered Entity in any form or medium whatsoever

2. **Definitions.** For purposes of this Addendum, the terms used herein, unless otherwise defined, shall have the same meanings as used in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), or the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and any amendments or implementing regulations, (collectively "HIPAA Rules")

3. **Compliance with Applicable Law.** The parties acknowledge and agree that, beginning with the relevant effective date, Business Associate shall comply with its obligations under this Addendum and with all obligations of a business associate under HIPAA, HITECH, the HIPAA Rules, and other applicable laws and regulations, as they exist at the time this Addendum is executed and as they are amended, for so long as this Addendum is in place

4. **Permissible Use and Disclosure of PHI.** Business Associate may use and disclose PHI as necessary to carry out its duties to a Covered Entity pursuant to the terms of the Agreement and as required by law. Business Associate may also use and disclose PHI (i) for its own proper management and administration, and (ii) to carry out its legal responsibilities. If Business Associate discloses Protected Health Information to a third party for either above reason, prior to making any such disclosure, Business Associate must obtain: (i) reasonable assurances from the receiving party that such PHI will be held confidential and be disclosed only as required by law or for the purposes for which it was disclosed to such receiving party; and (ii) an agreement from such receiving party to immediately notify Business Associate of any known breaches of the confidentiality of the PHI

5. **Limitations on Use and Disclosure of PHI.** Business Associate shall not, and shall ensure that its directors, officers, employees, subcontractors, and agents do not, use or disclose PHI in any manner that is not permitted by the Agreement or that would violate Subpart E of 45 C.F.R. 164 ("Privacy Rule") if done by a Covered Entity. All uses and disclosures of, and requests by, Business Associate for PHI are subject to the minimum necessary rule of the Privacy Rule.

6. **Required Safeguards to Protect PHI.** Business Associate shall use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 ("Security Rule") with respect to electronic PHI, to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Addendum.

7. **Reporting to Covered Entity.** Business Associate shall report to the affected Covered Entity without unreasonable delay: (a) any use or disclosure of PHI not provided for by the Agreement of which it becomes aware; (b) any breach of unsecured PHI in accordance with 45 C.F.R. Subpart D of 45 C.F.R. 164 ("Breach Notification Rule"); and (c) any security incident of which it becomes aware. With regard to Security Incidents caused by or occurring to Business Associate, Business Associate shall cooperate with the Covered Entity's investigation, analysis, notification and mitigation activities, and except for Security Incidents caused by Covered Entity, shall be responsible for reasonable costs incurred by the Covered Entity for those activities. Notwithstanding the foregoing, Covered Entity acknowledges and shall be deemed to have received advanced notice from Business Associate that there are routine occurrences of: (i) unsuccessful attempts to penetrate computer networks or services maintained by Business Associate; and (ii) immaterial incidents such as "pinging" or "denial of services" attacks.

8. **Mitigation of Harmful Effects.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate in violation of the requirements of the Agreement, including, but not limited to, compliance with any state law or contractual data breach requirements

9. **Agreements by Third Parties.** Business Associate shall enter into an agreement with any subcontractor of Business Associate that creates, receives, maintains or transmits PHI on behalf of Business Associate. Pursuant to such agreement, the subcontractor shall agree to be bound by the same or greater restrictions, conditions, and requirements that apply to Business Associate under this Addendum with respect to such PHI.

10. **Access to PHI.** Within five business days of a request by a Covered Entity for access to PHI about an individual contained in a Designated Record Set, Business Associate shall make available to the Covered Entity such PHI for so long as such information is maintained by Business Associate in the Designated Record Set, as required by 45 C.F.R. 164.524. In the event any individual delivers directly to Business Associate a request for access to PHI, Business Associate shall within five (5) business days forward such request to the Covered Entity

11. **Amendment of PHI.** Within five business days of receipt of a request from a Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), Business Associate shall provide such information to the Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. 164.526. In the event any individual delivers directly to Business Associate a request for amendment to PHI, Business Associate shall within five business days forward such request to the Covered Entity

12. **Documentation of Disclosures.** Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528 and HITECH.

13. **Accounting of Disclosures** Within five business days of notice by a Covered Entity to Business Associate that it has received a request for an accounting of disclosures of PHI, Business Associate shall make available to a Covered Entity information to permit the Covered Entity to respond to the request for an accounting of disclosures of PHI, as required by 45 C.F.R. 164.528 and HITECH.

14. **Other Obligations** To the extent that Business Associate is to carry out one or more of a Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with such requirements that apply to the Covered Entity in the performance of such obligations.

15. **Judicial and Administrative Proceedings** In the event Business Associate receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, the affected Covered Entity shall have the right to control Business Associate's response to such request, provided that, such control does not have an adverse impact on Business Associate's compliance with existing laws. Business Associate shall notify the Covered Entity of the request as soon as reasonably practicable, but in any event within seven business days of receipt of such request.

16. **Availability of Books and Records** Business Associate hereby agrees to make its internal practices, books, and records available to the Secretary of the Department of Health and Human Services for purposes of determining compliance with the HIPAA Rules.

17. **Breach of Contract by Business Associate** In addition to any other rights a party may have in the Agreement, this Addendum or by operation of law or in equity, either party may: i) immediately terminate the Agreement if the other party has violated a material term of this Addendum; or ii) at the non-breaching party's option, permit the breaching party to cure or end any such violation within the time specified by the non-breaching party. The non-breaching party's option to have cured a breach of this Addendum shall not be construed as a waiver of any other rights the non-breaching party has in the Agreement, this Addendum or by operation of law or in equity.

18. **Effect of Termination of Agreement** Upon the termination of the Agreement or this Addendum for any reason, Business Associate shall return to a Covered Entity or, at the Covered Entity's direction, destroy all PHI received from the Covered Entity that Business Associate maintains in any form, recorded on any medium, or stored in any storage system. This provision shall apply to PHI that is in the possession of Business Associate, subcontractors, and agents of Business Associate. Business Associate shall retain no copies of the PHI. Business Associate shall remain bound by the provisions of this Addendum, even after termination of the Agreement or Addendum, until such time as all PHI has been returned or otherwise destroyed as provided in this Section. For the avoidance of doubt, de-identified Customer Data shall not be subject to this provision.

19. **Injunctive Relief** Business Associate stipulates that its unauthorized use or disclosure of PHI while performing services pursuant to this Addendum would cause irreparable harm to a Covered Entity, and in such event, the Covered Entity shall be entitled to institute proceedings in any court of competent jurisdiction to obtain damages and injunctive relief.

20. **Owner of PHI** Under no circumstances shall Business Associate be deemed in any respect to be the owner of any PHI created or received by Business Associate on behalf of a Covered Entity.

21. **Safeguards and Appropriate Use of Protected Health Information** Covered Entity is responsible for implementing appropriate privacy and security safeguards to protect its PHI in compliance with HIPAA. Without limitation, it is Covered Entity's obligation to:

    21.1 Not include PHI in information Covered Entity submits to technical support personnel through a technical support request or to community support forums. In addition, Business Associate does not act as, or have the obligations of a Business Associate under the HIPAA Rules with respect to Customer Data once it is sent to or from Covered Entity outside ESO's Software over the public internet; and

    21.2 Implement privacy and security safeguards in the systems, applications, and software Covered Entity controls, configures and connects to ESO's Software.

22. **Third Party Rights** The terms of this Addendum do not grant any rights to any parties other than Business Associate and the Covered Entity.

23. **Signatures** The signatures to the Agreement (or the document evidencing the parties' adoption thereof) indicate agreement hereto and shall be deemed signatures hereof, whether manual, electronic or facsimile.

eso

CUSTOMER CONTACT

Customer	Merced Fire Department		
Name	Casey Wilson		
Email	wilsonc@cityofmerced.org		
Phone	(209)388-8835		

BILLING CONTACT

Payor	Merced Fire Department	Address	Accounts Payable
Name	Janet German		Merced CA, 95340
Email	german@cityofmerced.org	Billing Frequency	Annual
Phone	209-385-6891	Initial Term	12 months

Fire

Product	Volume	Price	Discount	Fee	Fee Type
Fire Setup & Online Training	3 Sessions	$1,785.00	($0.00)	$1,785.00	One-time
Fire Incidents CAD Integration	7600 Incidents	$2,495.00	($2,495.00)	$0.00	Recurring
ESO Fire Incidents	5 Stations	$5,275.00	($0.00)	$5,275.00	Recurring
ESO Inspections	5 Stations	$2,375.00	($0.00)	$2,375.00	Recurring
ESO Properties	5 Stations	$2,075.00	($0.00)	$2,075.00	Recurring
Fire Incidents NFIRS Data Import	7600 Incidents	$4,995.00	($4,995.00)	$0.00	One-time
Properties/Inspections Data Import	5 Stations	$1,775.00	($1,775.00)	$0.00	One-time
ESO Activities - Fire and Fire/EMS Agencies	5 Stations	$1,195.00	($0.00)	$1,195.00	Recurring
ESO Permits	5 Stations	$1,096.00	($1,096.00)	$0.00	Recurring

Total Recurring Fees	$	14,511.00
Total One-Time Fees	$	8,555.00
Discounts	$	(10,361.00)
TOTAL FEES	$	12,705.00

eso

Merced Fire Department

Jack Quintero, ACTING CITY MGR
[Signature]

Stephanie Dietz
[Print Name]

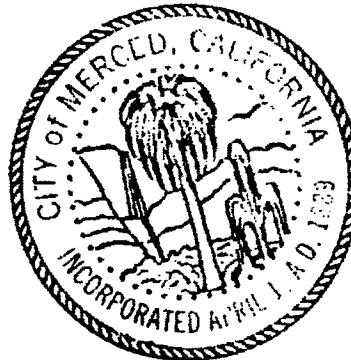_City Manager_
[Title]

Sept 9, 2021
[Today's Date]

For , the following payment terms apply:
Fees are invoiced at the Billing Frequency 15 days after the Effective Date, with recurring fees due on the anniversary.

APPROVED AS TO FORM:

John B. Goulart   7-1-21
JOHN B. GOULART   Date
Senior Deputy City Attorney

ATTEST:
CITY CLERK

BY_____
Assistant/Deputy City Clerk

118

Account Number: 001-0901-522-24-00   Proj# 238608

Amount: Not to exceed $154,711.00 for all 4 years.

VERIFIED

BY: _____
                    Finance Officer

FINANCE ENTRY	
Contract No:	301498
Vendor Number:	17024
P.O. Number:	143070
Funds Available:	Funds to be encumbered as needed. uy 9/1/21
	08/25/21 FL 9/1/21

eso

Merced Fire Department

ESO Solutions, Inc.

_____
[Signature]

_____
[Print Name]

_____
[Title]

_____
[Today's Date]

Signature

Robert Munden
Name

Chief Legal & Compliance Officer
Title

August 2, 2021
Date

For , the following payment terms apply:
Fees are invoiced at the Billing Frequency 15 days after the Effective Date. with recurring fees due
on the anniversary.

APPROVED AS TO FORM:

JOHN B. GOULART   Date
Senior Deputy City Attorney

eso

Merced Fire Department

_____
[Signature]

DEREK PARKER
[Print Name]

FIRE CHIEF
[Title]

8/16/21
[Today's Date]

ESO Solutions, Inc.

_____
Signature

Robert Munden_____

Name

Chief Legal & Compliance Officer
Title

August 2, 2021
Date

For , the following payment terms apply:
Fees are invoiced at the Billing Frequency 15 days after the Effective Date, with recurring fees due on the anniversary.

APPROVED AS TO FORM:

_____ 7-1-21
JOHN B. GOULART   Date
Senior Deputy City Attorney

122

Product	Description

EXHIBIT B
SUPPORT SERVICES ADDENDUM

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

   1.1   "Enhancement" means a modification, addition or new release of the Software that when added to the Software, materially changes its utility, efficiency, functional capability or application

   1.2   "E-mail Support" means ability to make requests for technical support assistance by e-mail at any time concerning the use of the then-current release of Software.

   1.3.   "Error" means an error in the Software, which significantly degrades performance of such Software as compared to ESO's then-published Documentation

   1.4   "Error Correction" means the use of reasonable commercial efforts to correct Errors.

   1.5.   "Fix" means the repair or replacement of object code for the Software or Documentation to remedy an Error.

   1.6   "Initial Response" means the first contact by a Support Representative after the incident has been logged and a ticket generated. This may include an automated email response depending on when the incident is first communicated.

   1.7   "Management Escalation" means, if the initial Workaround or Fix does not resolve the Error, notification of management that such Error(s) have been reported and of steps being taken to correct such Error(s).

   1.8   "Severity 1 Error" means an Error which renders the Software completely inoperative (e.g., a User cannot access the Software due to unscheduled downtime or an Outage)

   1.9   "Severity 2 Error" means an Error in which Software is still operable, however, one or more significant features or functionality are unavailable (e.g., a User cannot access a core component of the Software)

   1.1.   "Severity 3 Error" means any other error that does not prevent a User from accessing a significant feature of the Software (e.g., User is experiencing latency in reports)

   1.2.   "Severity 4 Error" means any error related to Documentation or a Customer Enhancement request.

   1.3   "Status Update" means if the initial Workaround or Fix cannot resolve the Error, notification of the Customer regarding the progress of the Workaround or Fix.

   1.4   "Online Support" means information available through ESO's website (www.eso.com), including frequently asked questions and bug reporting via Live Chat.

   1.5   "Support Representative" shall be ESO employee(s) or agent(s) designated to receive Error notifications from Customer, which Customer's Administrator has been unable to resolve

   1.6   "Update" means an update or revision to Software, typically for Error Correction

   1.7   "Upgrade" means a new version or release of Software or a particular component of Software, which improves the functionality or which adds functional capabilities to the Software and is not included in an Update. Upgrades may include Enhancements.

   1.8   "Workaround" means a change in the procedures followed or data supplied by Customer to avoid an Error without substantially impairing Customer's use of the Software

2.   SUPPORT SERVICES.

   2.1   Customer will provide at least one administrative employee (the "Administrator" or "Administrators") who will handle all requests for first-level support from Customer's employees with respect to the Software. Such support is intended to be the "front line" for support and information about the Software to Customer's Users. ESO will provide training, documentation, and materials to the Administrator to enable the Administrator to provide technical support to Customer's Users. The Administrator will notify a Support Representative of any Errors that the Administrator cannot resolve and assist ESO in information gathering

   2.2   ESO will provide Support Services consisting of (a) Error Correction(s); Enhancements, Updates and Upgrades that ESO, in its discretion, makes generally available to its customers without additional charge; and (c) E-mail Support, telephone support, and Online Support. ESO may use multiple forms of communication for purposes of submitting periodic status reports to Customer, including but not limited to, messages in the Software.

messages appearing upon login to the Software or other means of broadcasting Status Update(s) to multiple customers affected by the same Error, such as a customer portal.

2.3   ESO's support desk will be staffed with competent technical consultants who are trained in and thoroughly familiar with the Software and with Customer's applicable configuration. Telephone support and all communications will be delivered in intelligible English.

2.4.   Normal business hours for ESO's support desk are Monday through Friday 7:00 am to 7:00 pm CT. Customer will receive a call back from a Support Representative after-hours for a Severity 1 Error.

3   **ERROR PRIORITY LEVELS.** Customer will report all Errors to ESO via e-mail (support@eso.com) or by telephone (866-766-9471, option #3). ESO shall exercise commercially reasonable efforts to correct any Error reported by Customer in accordance with the priority level reasonably assigned to such Error by ESO.

   3.1   Severity 1 Error. ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within four hours; (iii) initiate Management Escalation promptly; and (iv) provide Customer with a Status Update within four hours if ESO cannot resolve the Error within four hours.

   3.2.   Severity 2 Error. ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within eight hours; (iii) initiate Management Escalation within 48 hours if unresolved; and (iv) provide Customer with a Status Update within forty-eight hours if ESO cannot resolve the Error within forty-eight hours.

   3.3.   Severity 3 Error. ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within three business days; and (iii) provide Customer with a Status Update within seven calendar days if ESO cannot resolve the Error within seven calendar days.

   3.4   Severity 4 Error. ESO shall (i) provide an Initial Response within seven calendar days.

4   **CONSULTING SERVICES.** If ESO reasonably believes that a problem reported by Customer is not due to an Error in the Software, ESO will so notify Customer. At that time, Customer may request ESO to proceed with a root cause analysis at Customer's expense as set forth herein or in a separate SOW. If ESO agrees to perform the investigation on behalf of Customer, then ESO's then-current and standard consulting rates will apply for all work performed in connection with such analysis, plus reasonable related expenses incurred. For the avoidance of doubt, Consulting Services will include customized report writing by ESO on behalf of Customer.

5   **EXCLUSIONS.**

   5.1   ESO shall have no obligation to perform Error Corrections or otherwise provide support for: (i) Customer's repairs, maintenance or modifications to the Software (if permitted); (ii) Customer's misapplication or unauthorized use of the Software; (iii) altered or damaged Software not caused by ESO; (iv) any third-party software; (v) hardware issues; (vi) Customer's breach of the Agreement; and (vii) any other causes beyond the ESO's reasonable control.

   5.2.   ESO shall have no liability for any changes in Customer's hardware or software systems that may be necessary to use the Software due to a Workaround or Fix.

   5.3   ESO is not required to perform any Error Correction unless ESO can replicate such Error on its own software and hardware or through remote access to Customer's software and hardware.

   5.4   Customer is solely responsible for its selection of hardware, and ESO shall not be responsible the performance of such hardware even if ESO makes recommendations regarding the same.

6.   **MISCELLANEOUS.** The parties acknowledge that from time-to-time ESO may update its support processes specifically addressed in this Exhibit and may do so by posting such updates to ESO's website or otherwise notifying Customer of such updates. Customer will accept updates to ESO's support procedures and any other terms in this Exhibit; provided however, that they do not materially decrease the level of Support Services that Customer will receive from ESO. THESE TERMS AND CONDITIONS DO NOT CONSTITUTE A PRODUCT WARRANTY. THIS EXHIBIT IS AN ADDITIONAL PART OF THE AGREEMENT AND DOES NOT CHANGE OR SUPERSEDE ANY TERM OF THE AGREEMENT EXCEPT TO THE EXTENT UNAMBIGUOUSLY CONTRARY THERETO.

EXHIBIT C
HIPAA BUSINESS ASSOCIATE ADDENDUM

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

Pursuant to the Master Subscription and License Agreement (the "Agreement") into which this HIPAA Business Associate Addendum (this "Addendum") has been incorporated, Business Associate may perform functions or activities involving the use and/or disclosure of PHI on behalf of the Covered Entity, and therefore, Business Associate may function as a business associate. Business Associate, therefore, agrees to the following terms and conditions.

1. **Scope.** This Addendum applies to and is hereby automatically incorporated into all present and future agreements and relationships, whether written, oral or implied, between Covered Entity and Business Associate, pursuant to which PHI is created, maintained, received or transmitted by Business Associate from or on behalf of Covered Entity in any form or medium whatsoever

2. **Definitions.** For purposes of this Addendum, the terms used herein, unless otherwise defined, shall have the same meanings as used in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), or the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and any amendments or implementing regulations, (collectively "HIPAA Rules")

3. **Compliance with Applicable Law.** The parties acknowledge and agree that, beginning with the relevant effective date, Business Associate shall comply with its obligations under this Addendum and with all obligations of a business associate under HIPAA, HITECH, the HIPAA Rules, and other applicable laws and regulations, as they exist at the time this Addendum is executed and as they are amended, for so long as this Addendum is in place

4. **Permissible Use and Disclosure of PHI.** Business Associate may use and disclose PHI as necessary to carry out its duties to a Covered Entity pursuant to the terms of the Agreement and as required by law. Business Associate may also use and disclose PHI (i) for its own proper management and administration, and (ii) to carry out its legal responsibilities. If Business Associate discloses Protected Health Information to a third party for either above reason, prior to making any such disclosure, Business Associate must obtain: (i) reasonable assurances from the receiving party that such PHI will be held confidential and be disclosed only as required by law or for the purposes for which it was disclosed to such receiving party; and (ii) an agreement from such receiving party to immediately notify Business Associate of any known breaches of the confidentiality of the PHI

5. **Limitations on Use and Disclosure of PHI.** Business Associate shall not, and shall ensure that its directors, officers, employees, subcontractors, and agents do not, use or disclose PHI in any manner that is not permitted by the Agreement or that would violate Subpart E of 45 C.F.R. 164 ("Privacy Rule") if done by a Covered Entity. All uses and disclosures of, and requests by, Business Associate for PHI are subject to the minimum necessary rule of the Privacy Rule.

6. **Required Safeguards to Protect PHI.** Business Associate shall use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 ("Security Rule") with respect to electronic PHI, to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Addendum.

7. **Reporting to Covered Entity.** Business Associate shall report to the affected Covered Entity without unreasonable delay: (a) any use or disclosure of PHI not provided for by the Agreement of which it becomes aware; (b) any breach of unsecured PHI in accordance with 45 C.F.R. Subpart D of 45 C.F.R. 164 ("Breach Notification Rule"); and (c) any security incident of which it becomes aware. With regard to Security Incidents caused by or occurring to Business Associate, Business Associate shall cooperate with the Covered Entity's investigation, analysis, notification and mitigation activities, and except for Security Incidents caused by Covered Entity, shall be responsible for reasonable costs incurred by the Covered Entity for those activities. Notwithstanding the foregoing, Covered Entity acknowledges and shall be deemed to have received advanced notice from Business Associate that there are routine occurrences of: (i) unsuccessful attempts to penetrate computer networks or services maintained by Business Associate; and (ii) immaterial incidents such as "pinging" or "denial of services" attacks.

8. **Mitigation of Harmful Effects.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate in violation of the requirements of the Agreement, including, but not limited to, compliance with any state law or contractual data breach requirements

9. **Agreements by Third Parties.** Business Associate shall enter into an agreement with any subcontractor of Business Associate that creates, receives, maintains or transmits PHI on behalf of Business Associate. Pursuant to such agreement, the subcontractor shall agree to be bound by the same or greater restrictions, conditions, and requirements that apply to Business Associate under this Addendum with respect to such PHI.

10. **Access to PHI.** Within five business days of a request by a Covered Entity for access to PHI about an individual contained in a Designated Record Set, Business Associate shall make available to the Covered Entity such PHI for so long as such information is maintained by Business Associate in the Designated Record Set, as required by 45 C.F.R. 164.524. In the event any individual delivers directly to Business Associate a request for access to PHI, Business Associate shall within five (5) business days forward such request to the Covered Entity.

11. **Amendment of PHI.** Within five business days of receipt of a request from a Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), Business Associate shall provide such information to the Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. 164.526. In the event any individual delivers directly to Business Associate a request for amendment to PHI, Business Associate shall within five business days forward such request to the Covered Entity

12. **Documentation of Disclosures.** Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528 and HITECH.

13. **Accounting of Disclosures** Within five business days of notice by a Covered Entity to Business Associate that it has received a request for an accounting of disclosures of PHI, Business Associate shall make available to a Covered Entity information to permit the Covered Entity to respond to the request for an accounting of disclosures of PHI, as required by 45 C.F.R. 164.528 and HITECH

14. **Other Obligations** To the extent that Business Associate is to carry out one or more of a Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with such requirements that apply to the Covered Entity in the performance of such obligations

15. **Judicial and Administrative Proceedings** In the event Business Associate receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, the affected Covered Entity shall have the right to control Business Associate's response to such request, provided that, such control does not have an adverse impact on Business Associate's compliance with existing laws. Business Associate shall notify the Covered Entity of the request as soon as reasonably practicable, but in any event within seven business days of receipt of such request.

16. **Availability of Books and Records** Business Associate hereby agrees to make its internal practices, books, and records available to the Secretary of the Department of Health and Human Services for purposes of determining compliance with the HIPAA Rules.

17. **Breach of Contract by Business Associate** In addition to any other rights a party may have in the Agreement, this Addendum or by operation of law or in equity, either party may: i) immediately terminate the Agreement if the other party has violated a material term of this Addendum; or ii) at the non-breaching party's option, permit the breaching party to cure or end any such violation within the time specified by the non-breaching party. The non-breaching party's option to have cured a breach of this Addendum shall not be construed as a waiver of any other rights the non-breaching party has in the Agreement, this Addendum or by operation of law or in equity.

18. **Effect of Termination of Agreement** Upon the termination of the Agreement or this Addendum for any reason, Business Associate shall return to a Covered Entity or, at the Covered Entity's direction, destroy all PHI received from the Covered Entity that Business Associate maintains in any form, recorded on any medium, or stored in any storage system. This provision shall apply to PHI that is in the possession of Business Associate, subcontractors, and agents of Business Associate. Business Associate shall retain no copies of the PHI. Business Associate shall remain bound by the provisions of this Addendum, even after termination of the Agreement or Addendum, until such time as all PHI has been returned or otherwise destroyed as provided in this Section. For the avoidance of doubt, de-identified Customer Data shall not be subject to this provision

19. **Injunctive Relief.** Business Associate stipulates that its unauthorized use or disclosure of PHI while performing services pursuant to this Addendum would cause irreparable harm to a Covered Entity, and in such event, the Covered Entity shall be entitled to institute proceedings in any court of competent jurisdiction to obtain damages and injunctive relief.

20. **Owner of PHI.** Under no circumstances shall Business Associate be deemed in any respect to be the owner of any PHI created or received by Business Associate on behalf of a Covered Entity

21. **Safeguards and Appropriate Use of Protected Health Information** Covered Entity is responsible for implementing appropriate privacy and security safeguards to protect its PHI in compliance with HIPAA. Without limitation, it is Covered Entity's obligation to:

   21.1 Not include PHI in information Covered Entity submits to technical support personnel through a technical support request or to community support forums In addition, Business Associate does not act as, or have the obligations of a Business Associate under the HIPAA Rules with respect to Customer Data once it is sent to or from Covered Entity outside ESO's Software over the public Internet; and

   21.2 Implement privacy and security safeguards in the systems, applications, and software Covered Entity controls, configures and connects to ESO's Software.

22. **Third Party Rights.** The terms of this Addendum do not grant any rights to any parties other than Business Associate and the Covered Entity.

23. **Signatures** The signatures to the Agreement (or the document evidencing the parties' adoption thereof) indicate agreement hereto and shall be deemed signatures hereof, whether manual, electronic or facsimile.

eso

CUSTOMER CONTACT

Customer	Merced Fire Department
Name	Casey Wilson
Email	wilsonc@cityofmerced.org
Phone	(209)388-8835

BILLING CONTACT

Payor	Merced Fire Department	Address	Accounts Payable
Name	Janet German		Merced CA, 95340
Email	germanj@cityofmerced.or g	Billing Frequency	Annual
Phone	209-386-6891	Initial Term	12 months

Fire

Product	Volume	Price	Discount	Total	Fee Type
Fire Setup & Online Training	3 Sessions	$1,785.00	($0.00)	$1,785.00	One-time
Fire Incidents CAD Integration	7600 Incidents	$2,495.00	($2,495.00)	$0.00	Recurring
ESO Fire Incidents	5 Stations	$5,275.00	($0.00)	$5,275.00	Recurring
ESO Inspections	6 Stations	$2,375.00	($0.00)	$2,375.00	Recurring
ESO Properties	5 Stations	$2,075.00	($0.00)	$2,075.00	Recurring
Fire Incidents NFIRS Data Import	7600 Incidents	$4,995.00	($4,995.00)	$0.00	One-time
Properties/Inspections Data Import	5 Stations	$1,775.00	($1,775.00)	$0.00	One-time
ESO Activities - Fire and Fire/EMS Agencies	5 Stations	$1,195.00	($0.00)	$1,195.00	Recurring
ESO Permits	5 Stations	$1,096.00	($1,096.00)	$0.00	Recurring

Total Recurring Fees	$	14,511.00
Total One-Time Fees	$	8,555.00
Discounts	$	(10,361.00)
TOTAL FEES	$	12,705.00

eso

Merced Fire Department

Jack Quinto, ACTING CITY MGR
[Signature]

Stephanie Dietz
[Print Name]

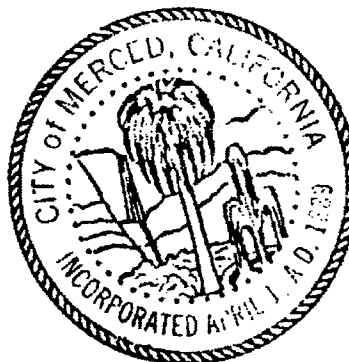City Manager
[Title]

Sept 9, 2021
[Today's Date]

For , the following payment terms apply:
Fees are invoiced at the Billing Frequency 15 days after the Effective Date, with recurring fees due on the anniversary.

APPROVED AS TO FORM:

John B. Goulart   7-1-21
JOHN B. GOULART   Date
Senior Deputy City Attorney

ATTEST:
CITY CLERK

BY _____
Assistant/Deputy City Clerk

Account Number: 001-0901-522-24-00   Proj# 238608

Amount: Not to exceed $154,711.00 for all 4 years.

VERIFIED

BY: _____
                    Finance Officer

FINANCE ENTRY	
Contract No:	301498
Vendor Number:	17024
P.O. Number:	143070
Funds Available:	Funds to be encumbered as needed. uy 9/1/21
	08/25/21 FL 9/1/21

eso

Merced Fire Department

_____

[Signature]

_____

[Print Name]

_____

[Title]

_____

[Today's Date]

ESO Solutions, Inc.

Signature

Robert Munden

Name

Chief Legal & Compliance Officer

Title

August 2, 2021

Date

For , the following payment terms apply:
Fees are invoiced at the Billing Frequency 15 days after the Effective Date. with recurring fees due
on the anniversary.

APPROVED AS TO FORM:

7-1-21

JOHN B. GOULART   Date
Senior Deputy City Attorney

131

eso