

SERVICES PAYMENT AGREEMENT

This Services Payment Agreement (the "**Agreement**") is entered into as of 05/07/2021 ("**Effective Date**") by and between ESO SOLUTIONS, INC., a Texas corporation with its principal place of business at 11500 Alterra Parkway, Ste. 100, Austin, TX 78758 ("**ESO**"), and the County of Merced, with its principal place of business at 260 E. 15th Street, Merced, CA 95341 ("**Billing Agent**") (each a "**Party**" and collectively the "**Parties**").

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

WHEREAS, Billing Agent has agreed to pay for the Services for the benefit of the City of Merced Fire Department, with its principal place of business at 99 E 16th Street, Merced, CA 95340, and the City of Los Banos Fire Department, with its principal place of business at 333 7th Street, Los Banos, CA 93635 (collectively, "**Customers**"), and Billing Agent agrees to pay for all or a portion of the Services on behalf of Customers, all upon the terms and conditions set forth herein;

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

1. **Services.** ESO agrees to provide Customers the Services selected by Billing Agent on Exhibit A attached hereto and incorporated by reference herein. Billing Agent acknowledges that Services purchased hereunder are neither contingent on the delivery of any future functionality or future features, nor dependent on any oral or written public comments made by ESO regarding future functionality or future features.
2. **Term.** The Term of this Agreement shall run from commencement of the earlier Customer subscription year for Services and terminate at the conclusion of the later Customer subscription year for Services, as defined in Exhibit A.
3. **Subscription Fees, Invoices and Payment Terms.**
 - a. **Subscription Fees.** Billing Agent shall pay to ESO the fees for the Services as described in Exhibit A (the "**Fees**"). ESO may evaluate the Customers' usage and adjust Billing Agent's invoice based on changes in the Customer usage as indicated in Exhibit A. However, in no event shall Billing Agent pay more than ten (10) percent above the amounts specified in Exhibit A in connection with the Services provided to Customers.
 - b. **Payment of Invoices.** Billing Agent shall pay the full amount of invoices owed by it as provided in Exhibit A within forty-five (45) days of receipt (the "**Due Date**") and at or after commencement of the subscription year for Services, as defined in Exhibit A. Billing Agent is responsible for providing complete and accurate billing and contact information to ESO and to notify ESO of any changes to such information.
 - c. **Disputed Invoices.** If Billing Agent in good faith disputes a portion of an invoice, Billing Agent shall remit to ESO, by the Due Date, full payment of the undisputed portion of the invoice. In addition, Billing Agent must submit written documentation: (i) identifying the disputed amount, (ii) an explanation as to why the Billing Agent believes this amount is incorrect, (iii) what the correct amount should be, and (iv) written evidence supporting Billing Agent's claim. If Billing Agent does not notify ESO of a disputed invoice by the Due Date, Billing Agent shall have waived its right to dispute that invoice. Any disputed amounts determined by ESO to be owed shall be due within ten (10) days of Billing Agent's receipt of ESO's written determination to that effect.
4. **Termination.**
 - a. **Termination by Billing Agent for ESO Default.** If ESO fails to perform a material obligation under this Agreement and does not remedy such failure within thirty (30) days following written notice from Billing Agent ("**ESO Default**"), Billing Agent may terminate this Agreement without incurring further liability. In such event, Subscription Fees owed shall be prorated based on the percentage of the Term that elapsed prior to the event of default. If ESO is unable to provide Service(s) for ninety (90) consecutive days due to a Force Majeure event as defined in Section 16a, *Force Majeure*, Billing Agent may terminate the affected Service(s) without liability to ESO.
 - b. **Termination by ESO for Billing Agent Default.** ESO may terminate this Agreement with no further liability if (i) Billing Agent fails to pay for Services as required by this Agreement and such failure remains uncorrected for thirty (30) days following written notice from ESO, or (ii) Billing Agent fails to perform any other material obligation under this Agreement and does not remedy such failure within thirty (30) days following written notice from ESO (collectively referred to as "**Billing Agent Default**"). In the event of a Billing Agent Default, ESO shall have the right to (i) terminate this Agreement; (ii) suspend all Services being provided to Customer; (iii) terminate the right to use the Software on the web and/or mobile devices; (iv) offset any amounts that are owed to Billing Agent by ESO against any past due amount then owed to ESO; and/or (v) take any action in connection with any other right or remedy ESO may have under this Agreement, at law or in equity. If ESO terminates this Agreement due to a Billing Agent Default, Billing Agent shall remain liable for all accrued Subscription Fees and other charges.
 - c. **Termination of Business Arrangements.** Notwithstanding the renewal provision of Section 2 of this Agreement, following the expiration or termination of the business arrangements between either Party and the Customers, this Services Payment Agreement shall terminate upon the date written notice thereof is provided to the other Party. In the event of a termination under this Section 4.c

"Termination of Business Arrangements," Billing Agent shall remit all earned but unpaid Subscription Fees immediately to ESO.

5. **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:
 - a. Commercial general liability insurance with a minimum of \$1 million per occurrence and \$2 million aggregate;
 - b. 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;
 - c. 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. The policy shall be endorsed to waive the insurer's subrogation rights against the Customers and Billing Agent;
 - d. 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 \$2 million.
6. **Limitation of Liability.** NOTWITHSTANDING ANY OTHER PROVISION HEREOF, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST REVENUES OR COST OF PURCHASING REPLACEMENT SERVICES) ARISING OUT OF OR RELATING TO THIS AGREEMENT. THIS SECTION SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT. EACH PARTY ACKNOWLEDGES THAT THIS LIMITATION OF LIABILITY WAS SPECIFICALLY BARGAINED FOR AND IS ACCEPTABLE TO BILLING AGENT. FURTHER, EACH PARTY'S WILLINGNESS TO AGREE TO THE LIMITATIONS CONTAINED IN THIS SECTION WAS MATERIAL TO ENTERING INTO THIS AGREEMENT.
7. **Confidential Information.** "**Confidential Information**" shall mean all information disclosed in writing by one Party to the other Party that is clearly marked "CONFIDENTIAL" or "PROPRIETARY" by the disclosing Party at the time of disclosure or which reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information does not include any information that (i) was already known by the receiving Party free of any obligation to keep it confidential at the time of its disclosure; (ii) becomes publicly known through no wrongful act of the receiving Party; (iii) is rightfully received from a third person without knowledge of any confidential obligation; (iv) is independently acquired or developed without violating any of the obligations under this Agreement; or (v) is approved for release by written authorization of the disclosing Party.

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

Confidential Information shall not be disclosed to any third party without the prior written consent of the owner of the Confidential Information, except as provided above. The recipient shall use Confidential Information only for purposes of this Agreement and shall protect Confidential Information from disclosure using the same degree of care used to protect its own Confidential Information, but in no event less than a reasonable degree of care. Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed upon request of the disclosing Party, if allowed by law. Because monetary damages may be insufficient in the event of a breach or threatened breach of the foregoing provisions, the affected Party may be entitled to seek an injunction or restraining order in addition to such other rights or remedies as may be available under this Agreement, at law or in equity, including but not limited to monetary damages.

8. **General Provisions.**

- a. **Force Majeure.** Neither Party shall be liable to the other, nor deemed in default under this Agreement if and to the extent that such Party's performance of this Agreement is delayed or prevented by reason of Force Majeure, which is defined to mean an event that is beyond the reasonable control of the affected Party and occurs without such Party's fault or negligence.
- b. **Entire Agreement.** This Agreement, including all schedules, exhibits, addenda, and any Business Associate Agreement (as that term is used in the Health Insurance Portability and Accountability Act and related regulations) incorporated herein by reference, constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the Party against whom the modification, amendment or waiver is asserted.
- c. **Governing Law.** This Agreement, any related Addenda, and any CLAIM, DISPUTE, OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT AND EQUITABLE CLAIMS) BETWEEN CUSTOMERS AND ESO, including their affiliates, contractors,

and agents, and each of their respective employees, directors, and officers (a "Dispute") will be governed by the laws of the State of Texas, without regard to conflicts of law. Notwithstanding the foregoing, in the event Billing Agent is a U.S. city, county, municipality or other U.S. governmental entity, then any Dispute will be governed by the law of state where Billing Agent is located, 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.

- d. Venue. The parties agree that any Dispute shall be brought exclusively in the state or federal courts located in Travis County, Texas. The Parties agree to submit to the personal jurisdiction of such courts. Notwithstanding the foregoing, in the event Billing Agent is a U.S. city, county, municipality or other U.S. governmental entity, then any Dispute shall be brought exclusively in the state or federal courts located in the county where Billing Agent is located.
- e. Dispute Resolution. Billing Agent 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 thirty (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.
- f. Compliance with Laws. Both Parties shall comply with and give all notices required by all applicable federal, state and local laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of this Agreement.
- g. Waiver. No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. If Billing Agent has made any change to the Agreement that Billing Agent did not bring to ESO's attention in a way that is reasonably calculated to put ESO on notice of the change, the change shall not become part of the Agreement.
- h. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- i. Taxes and Fees. This Agreement is exclusive of all taxes and fees. Unless otherwise required by law, Billing Agent is responsible for and will remit (or will reimburse ESO for) all taxes of any kind, including sales, use, duty, customs, withholding, value-added, and other similar federal, state or local taxes (other than taxes based on ESO's income) assessed in connection with the Services and/or Software provided to Billing Agent and Customers under this Agreement.
- j. Independent Contractor. Nothing in this Agreement shall be construed to create: (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates; or (ii) a relationship of employer and employee between the Parties. Both Parties are independent contractors.
- k. Counterparts; Execution. This Agreement and any amendments hereto may be executed by the Parties individually or in any combination, in one or more counterparts, each of which shall be an original and all of which shall together constitute one and the same agreement. This Agreement and any amendments thereto by the Parties shall be legally valid and effective through: (i) executing and delivering the paper copy of the document, (ii) transmitting the executed paper copy of the documents by facsimile transmission or electronic mail in "portable document format" (".pdf") or other electronically scanned format, or (iii) creating, generating, sending, receiving or storing by electronic means this Agreement and any amendments, the execution of which is accomplished through use of an electronic process and executed or adopted by a Party with the intent to execute this Agreement (i.e. "electronic signature" through a process such as DocuSign®). In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the Party against whom enforcement of this Agreement is sought.
- l. Notice. All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; or (iii) overnight delivery service with proof of delivery. Notices shall be sent to the addresses above. No Party to this Agreement shall refuse delivery of any notice hereunder.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned expressly agree and warrant that they are authorized to sign and enter into this Agreement on behalf of the Party for which they sign and have executed this Agreement, which shall take effect on the date of the last party signature below.

ESO:

DocuSigned by:

Matt Walker

0A9B9316981E47C
[Signature]

Matt Walker

[Printed Name]

COO

[Title]

4/8/2021

[Date]

BILLING AGENT:

[Signature]
[Signature]

DAVID MIRRIONE

[Printed Name]

ASSISTANT CEO

[Title]

5/7/2021

[Date]

APPROVED AS TO LEGAL FORM:

**FORREST W. HANSEN
MERCED COUNTY COUNSEL**

BY: [Signature]

Jared E. Christensen

EXHIBIT A

SCHEDULE OF FEES

Billing Agent agrees to pay for the following Services on behalf of Customers for the first year of subscription, at the fees indicated below, but in no event to exceed ten (10) percent more than said fees, without first amending this Agreement.

City of Merced Fire Department

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

City of Los Banos Fire Department

EHR					
Product	Volume	Price	Discount	Total	Fee Type
ESO EHR	1300 Incidents	\$4,990.00	(\$0.00)	\$4,990.00	Recurring
EHR CAD Integration	1300 Incidents	\$1,495.00	(\$0.00)	\$1,495.00	Recurring
EHR Setup & Online Training	3 Sessions	\$1,785.00	(\$0.00)	\$1,785.00	One-time
EHR - FIREHOUSE Interface	1300 Incidents	\$995.00	(\$995.00)	\$0.00	Recurring
Total Recurring				\$	7,480.00
Total One-Time				\$	1,785.00
Discounts				\$	(995.00)
TOTAL				\$	8,270.00

PAYMENT TERMS AND PAYMENT MILESTONES

The subscription year for Services shall begin upon execution of each Customer's Subscription Agreement or upon the commencement of active work on software implementation, whichever date comes later. The Subscription Fees are invoiced annually in advance at the commencement of the subscription year for Services.

Certificate Of Completion

Envelope Id: 21BCBD44F03745E5956451C0D82E31C9
 Subject: Please DocuSign: ESO - Merced County - SPA - 4-8-2021.pdf
 Source Envelope:
 Document Pages: 5 Signatures: 1
 Certificate Pages: 5 Initials: 0
 AutoNav: Enabled
 Envelope Stamping: Enabled
 Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Status: Completed

Envelope Originator:
 Eddie Cruz
 11500 Alterra Parkway
 Austin, TX 78758
 Eddie.Cruz@esosolutions.com
 IP Address: 73.206.238.83

Record Tracking

Status: Original
 4/8/2021 9:26:02 AM

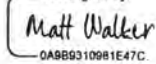
Holder: Eddie Cruz
 Eddie.Cruz@esosolutions.com

Location: DocuSign

Signer Events

Matt Walker
 matt.walker@eso.com
 COO
 Security Level: Email, Account Authentication
 (None)

Signature

DocuSigned by:

 0A9B9310981E47C

Signature Adoption: Pre-selected Style
 Using IP Address: 72.48.214.86

Timestamp

Sent: 4/8/2021 9:32:33 AM
 Viewed: 4/8/2021 9:33:04 AM
 Signed: 4/8/2021 9:33:13 AM

Electronic Record and Signature Disclosure:
 Accepted: 4/8/2021 9:33:04 AM
 ID: a24d1f86-63fb-448f-beeb-d6095667d45c

In Person Signer Events

Signature

Timestamp

Editor Delivery Events

Status

Timestamp

Agent Delivery Events

Status

Timestamp

Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events

Status

Timestamp

Carbon Copy Events

Status

Timestamp

Robert Munden
 robert.munden@eso.com
 General Counsel & Secretary
 ESO SOLUTIONS, INC.
 Security Level: Email, Account Authentication
 (None)

COPIED

Sent: 4/8/2021 9:32:33 AM

Electronic Record and Signature Disclosure:
 Accepted: 3/5/2021 8:20:12 AM
 ID: 02408d30-1536-4b67-a4e0-a391a73e773a

Witness Events

Signature

Timestamp

Notary Events

Signature

Timestamp

Envelope Summary Events

Status

Timestamps

Envelope Sent
 Certified Delivered

Hashed/Encrypted
 Security Checked

4/8/2021 9:32:33 AM
 4/8/2021 9:33:04 AM

Envelope Summary Events

Signing Complete
Completed

Status

Security Checked
Security Checked

Timestamps

4/8/2021 9:33:13 AM
4/8/2021 9:33:13 AM

Payment Events**Status****Timestamps****Electronic Record and Signature Disclosure**

CONSUMER DISCLOSURE

From time to time, ESO Solutions (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign, Inc. (DocuSign) electronic signing system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after signing session and, if you elect to create a DocuSign signer account, you may access them for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of a DocuSign envelope instead of signing it. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact ESO Solutions:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: peter.quadrino@esosolutions.com

To advise ESO Solutions of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at peter.quadrino@esosolutions.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc. to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in the DocuSign system.

To request paper copies from ESO Solutions

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to peter.quadrino@esosolutions.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with ESO Solutions

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to peter.quadrino@esosolutions.com and in the body of such request you must state your e-mail, full name, US Postal Address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows® 2000, Windows® XP, Windows Vista®; Mac OS® X
Browsers:	Final release versions of Internet Explorer® 6.0 or above (Windows only); Mozilla Firefox 2.0 or above (Windows and Mac); Safari™ 3.0 or above (Mac only)
PDF Reader:	Acrobat® or similar software may be required to view and print PDF files
Screen Resolution:	800 x 600 minimum

Enabled Security Settings:	Allow per session cookies
----------------------------	---------------------------

** These minimum requirements are subject to change. If these requirements change, you will be asked to re-accept the disclosure. Pre-release (e.g. beta) versions of operating systems and browsers are not supported.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC CONSUMER DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify ESO Solutions as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by ESO Solutions during the course of my relationship with you.