



February 14<sup>th</sup>, 2017

Woodbury County EMS  
121 Deer Run Trail  
Climbing Hill, Iowa 51015

Greetings,

Enclosed, please find our fully-executed Subscription Agreement.  
Please let me know if you have any questions – I can be reached  
at (512) 308-6508.

Thank you for choosing ESO!

Sincerely,



Scott Kelly  
Contract Manager

Enclosures



PATRICK R. GILL  
WOODBURY COUNTY  
AUDITOR & RECORDER &  
COMM. OF ELECTIONS  
2017 FEB 27 PM 2 18

The ESO  
Solutions team  
brings together

## SUBSCRIPTION AGREEMENT

This Subscription Agreement (the "*Agreement*") is entered into this 2 day of February, 2017 ("*Effective Date*") by and between ESO SOLUTIONS, INC., a Texas corporation with its principal place of business at 9020 N Capital of Texas Highway, Building II-300, Austin, Texas 78759 ("*ESO*"), and Woodbury County Emergency Services, with its principal place of business at 121 Deer Run Trail, Climbing Hill, Iowa 51015, on behalf of itself and those parties listed on Exhibit D (collectively, "*Customer*") (each a "*Party*" and collectively the "*Parties*").

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

WHEREAS, Customer desires to obtain these Services from ESO for itself and the parties listed on Exhibit D, for whom Customer agrees it possesses all necessary power and authority to execute this Agreement on behalf of, and all upon the terms and conditions set forth herein;

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

1. **Services.** ESO agrees to provide Customer the Services selected by Customer on Exhibit A attached hereto and incorporated by reference herein. Customer agrees that Services purchased hereunder are neither contingent on the delivery of any future functionality or future features, nor dependent on any oral or written public comments made by ESO regarding future functionality or future features.
2. **Term.** The Term of this Agreement shall commence on the Effective Date and shall terminate one year after the Effective Date ("*Initial Term*"). THE AGREEMENT SHALL AUTOMATICALLY RENEW FOR SUCCESSIVE RENEWAL TERMS OF ONE YEAR, UNLESS ONE PARTY GIVES THE OTHER PARTY WRITTEN NOTICE THAT THE AGREEMENT WILL NOT RENEW, AT LEAST THIRTY (30) DAYS PRIOR TO THE END OF THE CURRENT TERM.
3. **Subscription Fees, Invoices and Payment Terms.**
  - a. **Subscription Fees.** Customer shall pay to ESO the fees for the Services as described in Exhibit A (the "*Subscription Fees*"). ESO may evaluate Customer's usage and adjust Customer's invoice based on changes in Customer usage as indicated in Exhibit A. ESO shall have the option to increase pricing, except during the Initial Term, as long as it provides at least sixty (60) days' notice of such increase to Customer prior to automatic renewal under Section 2 above.
  - b. **Payment of Invoices.** Customer shall pay the full amount of invoices within thirty (30) days of receipt (the "*Due Date*"). Customer is responsible for providing complete and accurate billing and contact information to ESO and to notify ESO of any changes to such information.
  - c. **Disputed Invoices.** If Customer in good faith disputes a portion of an invoice, Customer shall remit to ESO, by the Due Date, full payment of the undisputed portion of the invoice. In addition, Customer must submit written documentation: (i) identifying the disputed amount, (ii) an explanation as to why the Customer believes this amount is incorrect, (iii) what the correct amount should be, and (iv) written evidence supporting Customer's claim. If Customer does not notify ESO of a disputed invoice by the Due Date, Customer shall have waived its right to dispute that invoice. Any disputed amounts determined by ESO to be payable shall be due within ten (10) days of such determination.
4. **Termination.**
  - a. **Termination by Customer for ESO Default.** If ESO fails to perform a material obligation under this Agreement and does not remedy such failure within thirty (30) days following written notice from Customer ("*ESO Default*"), Customer may terminate this Agreement without incurring further liability, except for the payment of all accrued but unpaid Subscription Fees. If ESO is unable to provide Service(s) for ninety (90) consecutive days due to a Force Majeure event as defined in Section 16a, *Force Majeure*, Customer may terminate the affected Service(s) without liability to ESO.
  - b. **Termination by ESO for Customer Default.** ESO may terminate this Agreement with no further liability if (i) Customer fails to pay for Services as required by this Agreement and such failure remains uncorrected for five (5) days following written notice from ESO, or (ii) Customer fails to perform any other material obligation under this Agreement and does not remedy such failure within thirty (30) days following written notice from ESO (collectively referred to as "*Customer Default*"). In the event of a Customer Default, ESO shall have the right to (i) terminate this Agreement; (ii) suspend all Services being provided to Customer; (iii) terminate the right to use the Software on the web and/or mobile devices; (iv) apply interest to the amount past due, at the rate of one and one-half percent (1½%) (or the maximum legal rate, if less) of the unpaid amount per month; (v) offset any amounts that are owed to Customer by ESO against the past due amount then owed to ESO; and/or (vi) take any action in connection with any other right or remedy ESO may have under this Agreement, at law or in equity. If ESO terminates this Agreement due to a Customer Default, Customer shall remain liable for all accrued Subscription Fees and other charges. In addition, Customer agrees to pay ESO's reasonable expenses (including attorney and collection fees) incurred in enforcing ESO's rights in the event of a Customer Default.
5. **Delivery of Data upon Expiration or Termination of Agreement.** If Customer requests its data within thirty (30) days of expiration of this Agreement, or the termination of this Agreement pursuant to Section 4 above, ESO shall deliver to Customer its data. ESO shall

make reasonable and good faith efforts to accommodate Customer's preference for the type of media for delivery. Customer shall reimburse ESO for the cost of the media on which Customer's data is delivered to Customer.

6. **System Maintenance.** In the event ESO determines that it is necessary to interrupt the Services or that there is a potential for Services to be interrupted for the performance of system maintenance, ESO will use good-faith efforts to notify Customer prior to the performance of such maintenance and will schedule such maintenance during non-peak hours (midnight to 6 a.m. Central Standard Time). In no event shall interruption of Services for system maintenance constitute a failure of performance by ESO.
7. **Access to Internet.** Customer has sole responsibility for obtaining, maintaining, and securing its connections to the Internet, and ESO makes no representations to Customer regarding the reliability, performance or security of any particular network or provider.
8. **Mobile Software.** If Customer elects to use ESO's Mobile Software (the "**Software**"), the provisions of this Section shall apply.
  - a. **Use of Software.** Subject to the terms, conditions and restrictions in this Agreement and in exchange for the Mobile Software Interface Fees and/or Subscription Fees, ESO hereby grants to Customer a non-exclusive, world-wide, non-transferable rights, for the Term of this Agreement, to use and copy (for installation and backup purposes only) the Software to the units for which the Mobile Software Interface has been purchased.
  - b. **Ownership and Restrictions.** This Agreement does not convey any rights of ownership in or title to the Software or any copies thereof. All right, title and interest in the Software and any copies or derivative works thereof shall remain the property of ESO. Customer will not: (i) disassemble, reverse engineer or modify the Software; (ii) allow any third party to use the Software; (iii) use the Software as a component in any product or service provided by Customer to a third party; (iv) transfer, sell, assign, or otherwise convey the Software; (v) remove any proprietary notices placed on or contained within the Software; or (vi) copy the Software except for backup purposes. Customer agrees to keep the Software free and clear of all claims, liens, and encumbrances.
  - c. **Mobile Software Interface Fee.** The Mobile Software Interface Fee is non-refundable. The Software shall be deemed accepted upon delivery to Customer.
  - d. **Title.** ESO hereby represents and warrants to Customer that ESO is the owner of the Software or otherwise has the right to grant to Customer the rights set forth in this Agreement. In the event of a breach or threatened breach of the foregoing representation and warranty, Customer's sole remedy shall be to require ESO to either: (i) procure, at ESO's expense, the right to use the Software, or (ii) replace the Software or any part thereof that is in breach and replace it with Software of comparable functionality that does not cause any breach.
9. **Support and Updates.** During the Term of this Agreement, ESO shall provide Customer the support services and will meet the service levels as set forth in Exhibit B attached hereto and incorporated herein. ESO will also provide Updates to Customer, in accordance with Exhibit B.
10. **Other Services.** Upon request by Customer, ESO may provide services related to the Software other than the standard support described above at ESO's then-current labor rates. This may include on-site consultation, configuration, and initial technical assistance and training for the purpose of installing the Software and training selected personnel on the use and support of the Software. ESO shall undertake reasonable efforts to accommodate any written request by Customer for such professional services.
11. **Indemnification by Customer.** To the extent allowed by law, Customer will defend and indemnify ESO from any and all claims brought by third parties against ESO and will hold ESO harmless from all corresponding losses incurred by ESO arising out of or related to (i) Customer's misuse of the Services and/or Software, (ii) any services provided by Customer to third parties, or (iii) Customer's negligence, inaction or omission in connection with the services it provides to third parties.
12. **Limitation of Liability.** NOTWITHSTANDING ANY OTHER PROVISION HEREOF, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST REVENUES OR COST OF PURCHASING REPLACEMENT SERVICES) ARISING OUT OF OR RELATING TO THIS AGREEMENT. ADDITIONALLY, ESO SHALL NOT BE LIABLE TO CUSTOMER FOR ANY ACTUAL DAMAGES IN EXCESS OF THE AGGREGATE AMOUNT THAT ESO HAS, PRIOR TO SUCH TIME, COLLECTED FROM CUSTOMER WITH RESPECT TO SERVICES DELIVERED HEREUNDER; PROVIDED, HOWEVER, THAT THE LIMITATION OF LIABILITY DESCRIBED IN THIS SENTENCE SHALL NOT APPLY IN THE EVENT OF DAMAGES CAUSED BY ESO'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. FURTHERMORE, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER, EITHER IN CONTRACT OR IN TORT, FOR PROTECTION FROM UNAUTHORIZED ACCESS OF CUSTOMER DATA OR FROM UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION, NOT CONTROLLED BY ESO, THROUGH ACCIDENT OR FRAUDULENT MEANS OR DEVICES. THIS SECTION SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT. EACH PARTY ACKNOWLEDGES THAT THIS LIMITATION OF LIABILITY WAS SPECIFICALLY BARGAINED FOR AND IS ACCEPTABLE TO CUSTOMER. FURTHER, EACH PARTY'S WILLINGNESS TO AGREE TO THE LIMITATIONS CONTAINED IN THIS SECTION WAS MATERIAL TO ENTERING INTO THIS AGREEMENT.

13. **Acknowledgements and Disclaimer of Warranties.** Customer acknowledges that ESO cannot guarantee that there will never be any outages in ESO network and that no credits shall be given in the event Customer's access to ESO's network is interrupted. THE SERVICES SHALL FUNCTION FREE OF MATERIAL DEFECT AND IN ACCORDANCE WITH THE WRITTEN MATERIALS PROVIDED BY ESO. THE SERVICES ARE PROVIDED "AS IS." UNLESS OTHERWISE SPECIFIED HEREIN, ESO MAKES NO REPRESENTATION OR WARRANTY TO CUSTOMER OR ANY OTHER PERSON OR ENTITY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR A PARTICULAR PURPOSE, OF ANY SERVICE OR SOFTWARE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER (INCLUDING WITHOUT LIMITATION THAT THERE WILL BE NO IMPAIRMENT OF DATA OR THAT SERVICES WILL BE UNINTERRUPTED OR ERROR FREE), ALL OF WHICH WARRANTIES BY ESO ARE HEREBY EXCLUDED AND DISCLAIMED, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

14. **Confidential Information.** "Confidential Information" shall mean all information disclosed in writing by one Party to the other Party that is clearly marked "CONFIDENTIAL" or "PROPRIETARY" by the disclosing Party at the time of disclosure or which reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information does not include any information that (i) was already known by the receiving Party free of any obligation to keep it confidential at the time of its disclosure; (ii) becomes publicly known through no wrongful act of the receiving Party; (iii) is rightfully received from a third person without knowledge of any confidential obligation; (iv) is independently acquired or developed without violating any of the obligations under this Agreement; or (v) is approved for release by written authorization of the disclosing Party.

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

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

#### 15. **General Provisions.**

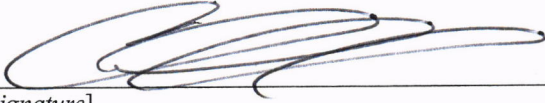
- a. **Force Majeure.** Neither Party shall be liable to the other, nor deemed in default under this Agreement if and to the extent that such Party's performance of this Agreement is delayed or prevented by reason of Force Majeure, which is defined to mean an event that is beyond the reasonable control 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) (*see Exhibit C*) are 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 shall be governed by the laws of the State of Iowa without regard to choice or conflict of law rules.
- d. **Arbitration.** Intentionally omitted.
- e. **No Press Releases without Consent.** Neither Party may use the other Party's name or trademarks, nor issue any publicity or public statements concerning the other Party or the existence or content of this Agreement, without the other Party's prior written consent. Notwithstanding, Customer agrees that ESO may use Customer's name and logo in ESO sales presentations, without Customer's prior written consent, during the Term of this Agreement, but only for the purposes of identifying the Customer as a customer of ESO. Likewise, Customer may use ESO's name and logo to identify ESO as a vendor of Customer.
- f. **Aggregate Data Reporting.** Customer hereby grants ESO the right to collect and store its data for aggregate reporting purposes, but in no event shall ESO disclose Protected Health Information ("**PHI**") unless permitted by law. Moreover, ESO will not identify Customer without Customer's consent.
- g. **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.

- h. Waiver. No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. If Customer has made any change to the Agreement that Customer did not bring to ESO's attention in a way that is reasonably calculated to put ESO on notice of the change, the change shall not become part of the Agreement.
- i. 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.
- j. Taxes and Fees. This Agreement is exclusive of all taxes and fees. Unless otherwise required by law, Customer is responsible for and will remit (or will reimburse ESO for) all taxes of any kind, including sales, use, duty, customs, withholding, property, value-added, and other similar federal, state or local taxes (other than taxes based on ESO's income) assessed in connection with the Services and/or Software provided to Customer under this Agreement.
- k. Independent Contractor. Nothing in this Agreement shall be construed to create: (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates; or (ii) a relationship of employer and employee between the Parties. ESO is an independent contractor and not an agent of Customer.
- l. Counterparts; Execution. This Agreement and any amendments hereto may be executed by the Parties individually or in any combination, in one or more counterparts, each of which shall be an original and all of which shall together constitute one and the same agreement. Execution and delivery of this Agreement and any amendments by the Parties shall be legally valid and effective through: (i) executing and delivering the paper copy of the document, (ii) transmitting the executed paper copy of the documents by facsimile transmission or electronic mail in "portable document format" ("*.pdf*") or other electronically scanned format, or (iii) creating, generating, sending, receiving or storing by electronic means this Agreement and any amendments, the execution of which is accomplished through use of an electronic process and executed or adopted by a Party with the intent to execute this Agreement (i.e. "*electronic signature*" through a process such as DocuSign®). In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the Party against whom enforcement of this Agreement is sought.
- m. Notice. All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; (iii) overnight delivery service with proof of delivery, or (iv) fax. Notices shall be sent to the addresses above. No Party to this Agreement shall refuse delivery of any notice hereunder.

[*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 on the Effective Date first written above.

ESO:



[Signature]

Chris Dillie

[Printed Name]

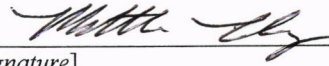
President and CEO

[Title]

2/13/2017

[Date]

CUSTOMER:



[Signature]

Matthew Ulag

[Printed Name]

Chairman Board of Supervisors

[Title]

1-31-17

[Date]

**EXHIBIT A**  
**SCHEDULE OF SUBSCRIPTION FEES**

Customer has selected the following Services, at the fees indicated:

Product	Quantity	Discounts	Total Price	Line Item Description
EHR Suite w/ QM & Mobile 600 - 1,250 Calls	1.00	\$0.00	\$3,290.00	Annual Recurring Cost - Includes unlimited users, live support, state data reporting, Analytics, hospital link-up, continuous weekly web training, free regional user groups, and software upgrades
Cardiac Monitor 600 - 1,250 Incidents	1.00	\$0.00	\$795.00	Annual Recurring Cost - Unlimited cardiac monitors, allows for import of cardiac monitor data
Fax 600 - 1,250 Incidents	1.00	\$113.00	\$0.00	Annual Recurring Cost - Allows for faxing of patient care records to hospitals
Services - Training Travel Costs	1.00	\$0.00	\$1,500.00	One Time Cost - Covers all travel costs associated with training
Services - Training	1.00	\$0.00	\$995.00	One Time Cost

Full Price	\$6,693.00
Sum of Discounts	\$113.00
Grand Total	\$6,580.00

**PAYMENT TERMS AND PAYMENT MILESTONES**

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