CLACKAMAS
C O U N T Y

Nancy Bush
Director

Disaster Management   T 503-655-8378
2200 Kaen Road
Oregon City, OR 97045   clackamas.us

December 17, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of FY20 State Homeland Security Grant Program
Application to the State of Oregon for Six Projects

Purpose/Outcomes	Disaster Management requests approval to apply to the State of Oregon for the FY20 State Homeland Security Grant Program (SHSP). The State requires one collaborative application from each county. The Clackamas County application includes three Clackamas County projects as well as three projects for other stakeholder agencies.
Dollar Amount and Fiscal Impact	The total amount of the application is $707,980. $136,300 is requested by Disaster Management for a portable emergency operations center and three shelter trailers. $320,000 is requested by the Clackamas County Sheriff's Office for an armored tactical vehicle. The grant is a 100% federal share grant that will reimburse Clackamas County for all project costs. The remaining $251,680 is for three projects that if awarded, will result in direct awards between the State and stakeholder agencies. These projects are: 1) $9,980 – Two rail car hazmat release training aids for Clackamas Fire District #1 2) $100,000 – Emergency Management Specialist for the City of Oregon City 3) $141,700 – Simulation and Tactical Firearms Training Advancements for the City of Oregon City Police Department
Funding Source	FY 2020 State Homeland Security Grant Program via the State of Oregon Military Department, Office of Emergency Management
Duration	Estimated: October 1, 2020 through September 30, 2022.
Counsel Approval	12/08/2020 AN
Previous Board Action	None
Strategic Plan Alignment	1. Coordination and Integration of Planning and Preparedness 2. Ensure Safe, Healthy and Secure Communities
Contact Person	Nancy Bush, Director, 503-655-8665
Contract No.	Not applicable

BACKGROUND:
Each year, Clackamas County Disaster Management leads the development of the application for that fiscal year's State Homeland Security Grant Program. The projects are nominated and selected by the Homeland Security Task Force which is a group of Clackamas County public safety stakeholders. The funding provided in the grant awards allows the Disaster Management Department to maintain and enhance important emergency operations capabilities.

RECOMMENDATION:
Staff respectfully recommends Board approval of the FY20 SHSP grant application.

Respectfully submitted,

Nancy Bush, Director

RECORDING MEMO

x	New Agreement/Contract
	Amendment/Change Order Original Number _____
	Policy, Reports,
	Other

ORIGINATING COUNTY
DEPARTMENT: __Disaster Management_____

PURCHASING FOR: _____N/A_____

OTHER PARTY TO
CONTRACT/AGREEMENT: _State of Oregon_____

BOARD AGENDA DATE: __December 17th , 2020_____
AGENDA ITEM NUMBER: _____

PURPOSE:
Approval of FY20 State Homeland Security Grant Program Application to the State of Oregon for Six Projects_____

_____

If you want the item returned to you after recording indicate here.
Please return to _Daniel Nibouar_ after recording.

OREGON MILITARY DEPARTMENT
OFFICE OF EMERGENCY MANAGEMENT
HOMELAND SECURITY GRANT PROGRAM
STATE HOMELAND SECURITY PROGRAM
CFDA # 97.067
Clackamas County
$36,600
Grant No: 20-204

This Agreement is made and entered into by and between the **State of Oregon,** acting by and through the Oregon Military Department, Office of Emergency Management, hereinafter referred to as "OEM," and **Clackamas County,** hereinafter referred to as "Subrecipient," and collectively referred to as the "Parties."

1. **Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law. Reimbursements will be made for Project Costs incurred beginning on **October 1**, **2020**, and ending, unless otherwise terminated or extended, on **September 30**, **2022** (the "Grant Award Period"). No Grant Funds are available for expenditures after the Grant Award Period. OEM's obligation to disburse Grant Funds under this Agreement is subject to Sections 6 and 10 of this Agreement.

2. **Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

   Exhibit A: **Project Description and Budget**
   Exhibit B: **Federal Requirements and Certifications**
   Exhibit C: **Subcontractor Insurance**
   Exhibit D: **Information required by 2 CFR 200.331(a)**

   In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: Exhibit B; this Agreement without Exhibits; Exhibit A; Exhibit C.

3. **Grant Funds.** In accordance with the terms and conditions of this Agreement, OEM shall provide Subrecipient an amount not to exceed **$36,600** in Grant Funds for eligible costs described in Section 6 hereof. Grant Funds for this Program will be from the Fiscal Year 2020 State Homeland Security Program (SHSP) grant.

4. **Project.** The Grant Funds shall be used solely for the Project described in Exhibit A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by OEM by amendment pursuant to Section 11.d hereof.

5. **Reports.** Failure of Subrecipient to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues may result in the suspension of grant payments, termination of this Agreement, or both.

a. Performance Reports.

    i. Subrecipient agrees to submit performance reports, using a form provided by OEM, on its progress in meeting each of the agreed upon milestones. The narrative reports will address specific information regarding the activities carried out under the FY 2020 State Homeland Security Program.

    ii. Reports are due to OEM on or before the 30th day of the month following each subsequent calendar quarter (ending on March 31, June 30, September 30, and December 31).

    iii. Subrecipient may request from OEM prior written approval to extend a performance report requirement past its due date. OEM, in its sole discretion, may approve or reject the request.

b. Financial Reimbursement Reports.

    i. To receive reimbursement, Subrecipient must submit a signed Request for Reimbursement (RFR), using a form provided by OEM that includes supporting documentation for all grant expenditures. RFRs may be submitted monthly but no less frequently than quarterly during the term of this Agreement. At a minimum, RFRs must be submitted on or before 30 days following each subsequent calendar quarter (ending on March 31, June 30, September 30, and December 31), and a final RFR must be submitted no later than 30 days following the end of the grant period.

    ii. Reimbursements for expenses will be withheld if performance reports are not submitted by the specified dates or are incomplete.

    iii. Reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the dates, times, and places of travel, and the actual expenses or authorized rates incurred.

    iv. Reimbursements will only be made for actual expenses incurred during the Grant Award Period. Subrecipient agrees that no grant may be used for expenses incurred before or after the Grant Award Period.

6. Disbursement and Recovery of Grant Funds.

    a.   **Disbursement Generally.** OEM shall reimburse eligible costs incurred in carrying out the Project, up to the Grant Fund amount provided in Section 3. Reimbursements shall be made by OEM upon approval by OEM of an RFR. Eligible costs are the reasonable and necessary costs incurred by Subrecipient for the Project, in accordance with the State Homeland Security Program guidance and application materials, including without limitation the United States Department of Homeland Security Notice of Funding Opportunity (NOFO), that are not excluded from reimbursement by OEM, either by this Agreement or by exclusion as a result of financial review or audit. The guidance, application materials and NOFO are available at http://www.oregon.gov/oem/emresources/Grants/Pages/HSGP.aspx.

    b. Conditions Precedent to Disbursement. OEM's obligation to disburse Grant Funds to Subrecipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:

i. OEM has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to make the disbursement.

ii. Subrecipient is in compliance with the terms of this Agreement including, without limitation, Exhibit B and the requirements incorporated by reference in Exhibit B.

iii. Subrecipient's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

iv. Subrecipient has provided to OEM a RFR in accordance with Section 5.b of this Agreement.

c. **Recovery of Grant Funds.** Any funds disbursed to Subrecipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement ("Unexpended Funds") must be returned to OEM. Subrecipient shall return all Misexpended Funds to OEM promptly after OEM's written demand and no later than 15 days after OEM's written demand.

7. **Representations and Warranties of Subrecipient.** Subrecipient represents and warrants to OEM as follows:

a. **Organization and Authority.** Subrecipient is a political subdivision of the State of Oregon and is eligible to receive the Grant Funds. Subrecipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Subrecipient of this Agreement (1) have been duly authorized by all necessary action of Subrecipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Subrecipient is a party or by which Subrecipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Subrecipient of this Agreement.

b. **Binding Obligation.** This Agreement has been duly executed and delivered by Subrecipient and constitutes a legal, valid and binding obligation of Subrecipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

c. **No Solicitation.** Subrecipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

d. **NIMS Compliance.** By accepting FY 2020 funds, Subrecipient certifies that it has met National Incident Management System (NIMS) compliance activities outlined in the Oregon NIMS Requirements located through OEM at http://www.oregon.gov/oem/emresources/Plans_Assessments/Pages/NIMS.aspx.

The warranties set forth in this section are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

8. Records Maintenance and Access; Audit.

    a. **Records, Access to Records and Facilities**. Subrecipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Subrecipient acknowledges and agrees, and Subrecipient will require its contractors, subcontractors, sub-recipients (collectively hereafter "contractors"), successors, transferees, and assignees to acknowledge and agree, to provide OEM, Oregon Secretary of State (Secretary), Office of Inspector General (OIG), Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), or any of their authorized representatives, access to records, accounts, documents, information, facilities, and staff. Subrecipient and its contractors must cooperate with any compliance review or complaint investigation by any of the above listed agencies, providing them access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary.   The right of access is not limited to the required retention period but shall last as long as the records are retained.

    b. **Retention of Records.** Subrecipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for until the latest of (a) six years following termination, completion or expiration of this Agreement, (b) upon resolution of any litigation or other disputes related to this Agreement, or (c) as required by 2 CFR 200.333. It is the responsibility of Subrecipient to obtain a copy of 2 CFR Part 200, and to apprise itself of all rules and regulations set forth.

    c. **Audits.**

        i. If Subrecipient expends $750,000 or more in Federal funds (from all sources) in its fiscal year, Subrecipient shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR 200 Subpart F. Copies of all audits must be submitted to OEM within 30 days of completion. If Subrecipient expends less than $750,000 in its fiscal year in Federal funds, Subrecipient is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section 8.a. herein.

        ii. Audit costs for audits not required in accordance with 2 CFR 200 Subpart F are unallowable. If Subrecipient did not expend $750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant.

        iii. Subrecipient shall save, protect and hold harmless the OEM from the cost of any audits or special investigations performed by the Secretary or any federal agency with respect to the funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subrecipient and the State of Oregon.

9.   Subrecipient Procurements; Property and Equipment Management and Records; Subcontractor Indemnity and Insurance

    a. **Subagreements.** Subrecipient may enter into agreements (hereafter "subagreements") for performance of the Project. Subrecipient shall use its own procurement procedures and regulations, provided that the procurement conforms to applicable Federal and State law

(including without limitation ORS chapters 279A, 279B, 279C, and that for contracts for more than $150,000, the contract shall address administrative, contractual or legal remedies for violation or breach of contract terms and provide for sanctions and penalties as appropriate, and for contracts for more than $10,000 address termination for cause or for convenience including the manner in which termination will be effected and the basis for settlement).

    i. Subrecipient shall provide to OEM copies of all Requests for Proposals or other solicitations for procurements anticipated to be for $100,000 or more and to provide to OEM, upon request by OEM, such documents for procurements for less than $100,000. Subrecipient shall include with its RFR a list of all procurements issued during the period covered by the report.

    ii. All subagreements, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner that encourages fair and open competition to the maximum practical extent possible. All sole-source procurements in excess of $100,000 must receive prior written approval from OEM in addition to any other approvals required by law applicable to Subrecipient. Justification for sole-source procurement in excess of $100,000 should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.

    iii. Subrecipient shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, or Requests for Proposals (RFP) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to OEM.

    iv. Subrecipient agrees that, to the extent it uses contractors, such contractors shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.

b. Purchases and Management of Property and Equipment; Records. Subrecipient agrees to comply with all applicable federal requirements referenced in Exhibit B, Section II.C.1 to this Agreement and procedures for managing and maintaining records of all purchases of property and equipment will, at a minimum, meet the following requirements:

    i. All property and equipment purchased under this agreement, whether by Subrecipient or a contractor, will be conducted in a manner providing full and open competition and in accordance with all applicable procurement requirements, including without limitation ORS chapters 279A, 279B, 279C, and purchases shall be recorded and maintained in Subrecipient's property or equipment inventory system.

    ii. Subrecipient's property and equipment records shall include: a description of the property or equipment; the manufacturer's serial number, model number, or other identification number; the source of the property or equipment, including the Catalog of Federal Domestic Assistance (CFDA) number; name of person or entity holding title to the property or equipment; the acquisition date; cost and percentage of Federal participation in the cost; the location, use and condition of the property or equipment; and any ultimate disposition data including the date of disposal and sale price of the property or equipment.

    iii. A physical inventory of the property and equipment must be taken and the results reconciled with the property and equipment records at least once every two years.

iv. Subrecipient must develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the property and equipment. Subrecipient shall investigate any loss, damage, or theft and shall provide the results of the investigation to OEM upon request.

v. Subrecipient must develop, or require its contractors to develop, adequate maintenance procedures to keep the property and equipment in good condition.

vi. If Subrecipient is authorized to sell the property or equipment, proper sales procedures must be established to ensure the highest possible return.

vii. Subrecipient agrees to comply with 2 CFR 200.313 pertaining to use and disposal of equipment purchased with Grant Funds, including when original or replacement equipment acquired with Grant Funds is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.

viii. Subrecipient shall require its contractors to use property and equipment management requirements that meet or exceed the requirements provided herein applicable to all property and equipment purchased with Grant Funds.

ix. Subrecipient shall, and shall require its contractors to, retain the records described in this Section 9.b. for a period of six years from the date of the disposition or replacement or transfer at the discretion of OEM. Title to all property and equipment purchased with Grant Funds shall vest in Subrecipient if Subrecipient provides written certification to OEM that it will use the property and equipment for purposes consistent with the State Homeland Security Program.

c. **Subagreement indemnity; insurance.** Subrecipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless OEM and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Subrecipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that OEM shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of OEM, be indemnified by the other party to Subrecipient's subagreement(s) from and against any and all Claims.

Any such indemnification shall also provide that neither Subrecipient's contractor(s) nor any attorney engaged by Subrecipient's contractor(s) shall defend any claim in the name of OEM or any agency of the State of Oregon (collectively "State"), nor purport to act as legal representative of the State or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Subrecipient's contractor is prohibited from defending State or that Subrecipient's contractor is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Subrecipient's contractor if State elects to assume its own defense.

Subrecipient shall require the other party, or parties, to each of its subagreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts provided in Exhibit C to this Agreement.

10. Termination

    a. **Termination by OEM.** OEM may terminate this Agreement effective upon delivery of written notice of termination to Subrecipient, or at such later date as may be established by OEM in such written notice, if:

        i. Subrecipient fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Subrecipient is, for any reason, rendered improbable, impossible, or illegal; or

        ii. OEM fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or

        iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or

        iv. The Project would not produce results commensurate with the further expenditure of funds; or

        v. Subrecipient takes any action pertaining to this Agreement without the approval of OEM and which under the provisions of this Agreement would have required the approval of OEM.

        vi. OEM determines there is a material misrepresentation, error or inaccuracy in Subrecipient's application.

    b. **Termination by Subrecipient.** Subrecipient may terminate this Agreement effective upon delivery of written notice of termination to OEM, or at such later date as may be established by Subrecipient in such written notice, if:

        i. The requisite local funding to continue the Project becomes unavailable to Subrecipient; or

        ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.

    c. **Termination by Either Party.** Either Party may terminate this Agreement upon at least ten days notice to the other Party and failure of the other Party to cure within the ten days, if the other Party fails to comply with any of the terms of this Agreement.

    d. **Settlement upon Termination.** Immediately upon termination under Sections 10.a.i, v., or vi, no Grant Funds shall be disbursed by OEM and Subrecipient shall return to OEM Grant Funds previously disbursed to Subrecipient by OEM in accordance with Section 6.c and the terminating party may pursue additional remedies in law or equity. Termination of this Agreement does not relieve Subrecipient of any other term of this Agreement that may survive termination, including without limitation Sections 11.a and c.

11.   GENERAL PROVISIONS

    a. **Contribution.** To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless OEM and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys' fees incurred related to any actual or alleged act or omission by Recipient, or its employees, agents or contractors. This Section shall survive expiration or termination of this Agreement.

b. **Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. Each party shall bear its own costs incurred under this Section 11.b.

c. **Responsibility for Grant Funds.** Subrecipient, pursuant to this Agreement with OEM, shall assume sole liability for its breach of the conditions of this Agreement, and shall, upon its breach of conditions that causes or requires OEM to return funds to DHS or FEMA, hold harmless and indemnify OEM for an amount equal to the funds received under this Agreement; or if legal limitations apply to the Subrecipient's indemnification ability, the indemnification amount shall be the maximum amount of funds available to Subrecipient for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

d. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.

e. **Duplicate Payment.** Subrecipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.

f. **No Third Party Beneficiaries.** OEM and Subrecipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

    Subrecipient acknowledges and agrees that the Federal Government, absent express written consent by the Federal Government, is not a party to this Agreement and shall not be subject to any obligations or liabilities to Subrecipient, contractor or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from the this Agreement.

g. **Notices.** Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, email or mailing the same by registered or certified mail, postage prepaid to Subrecipient or OEM at the appropriate address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed Notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.

h. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by, construed in accordance with, and enforced under the laws of the State of Oregon without regard to principles

of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between OEM (or any other agency or department of the State of Oregon) and Subrecipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of the Circuit Court of Marion County in the State of Oregon, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

i. **Compliance with Law.** Subrecipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B.

j. **Insurance; Workers' Compensation.** All employers, including Subrecipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than $500,000 must be included. Subrecipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.

k. **Independent Contractor.** Subrecipient shall perform the Project as an independent contractor and not as an agent or employee of OEM. Subrecipient has no right or authority to incur or create any obligation for or legally bind OEM in any way. Subrecipient acknowledges and agrees that Subrecipient is not an "officer", "employee", or "agent" of OEM, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.

l. **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

m. **Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.

n. **Integration and Waiver.** This Agreement, including all Exhibits and referenced documents, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Subrecipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

THE PARTIES, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

SIGNATURE PAGE TO FOLLOW

CLACKAMAS COUNTY

By _____

Name _____
(printed)

Date _____

APPROVED AS TO LEGAL SUFFICIENCY
(If required for Subrecipient)

By _____
Subrecipient's Legal Counsel

Date _____

Subrecipient Program Contact:
Nancy Bush
Director
Clackamas County Disaster Management
2200 Kaen Rd
Oregon City, OR 97045
503-655-8665
nbush@clackamas.us

Subrecipient Fiscal Contact:
Michael Morasko
Senior Accountant
Clackamas County Disaster Management
2051 Kaen Rd
Oregon City, OR 97045
503-742-5435
mmorasko@clackamas.us

STATE OF OREGON, acting by and through its Oregon Military Department, Office of Emergency Management

By _____

Name _____
(printed)
Operations and Preparedness Section Manager, OEM

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By Samuel B. Zeigler via email
Senior Assistant Attorney General

Date October 14, 2020

OEM Program Contact:
Kevin Jeffries
Grants Coordinator
Oregon Military Department
Office of Emergency Management
P.O. Box 14370
Salem, OR 97309-5062
503-378-3661
kevin.jeffries@state.or.us

OEM Fiscal Contact:
Natalie Day
Lead Accountant
Oregon Military Department
Office of Emergency Management
P.O. Box 14370
Salem, OR 97309-5062
503-378-3931
natalie.day@state.or.us

EXHIBIT A

Project Description and Budget

I. Project Description

Adding three shelter/mass care trailers to Clackamas County's resources allows the county to provide sheltering in terrorist or catastrophic events.

II. Budget

Trailer	$15,000
Cots	$15,000
Cots, oversized	$900
Blankets	$4,800
Supplies	$900
Total Budget:	**$36,600**

EXHIBIT B
Federal Requirements and Certifications

I. General. Subrecipient agrees to comply with all federal requirements applicable to this Agreement. Those federal requirements include, without limitation, financial management and procurement requirements; requirements for maintaining accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP); and all other financial, administrative, and audit requirements as set forth in the most recent versions of the Code of Federal Regulations (CFR), Department of Homeland Security (DHS) program legislation, and DHS/Federal Emergency Management Agency (FEMA) program regulations and requirements.

II. Specific Requirements and Certifications

    A. Debarment, Suspension, Ineligibility and Voluntary Exclusion. Subrecipient certifies by accepting funds under this Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency (2 CFR 200.213).

    B. Standard Assurances and Certifications Regarding Lobbying. Subrecipient is required to comply with 2 CFR 200.450 and the authorities cited therein, including 31 USC § 1352 and *New Restrictions on Lobbying* published at 55 Federal Register 6736 (February 26, 1990).

    C. Compliance with Applicable Federal Law. Subrecipient agrees to comply with all applicable laws, regulations, program guidance, the Federal Government in the performance of this Agreement, including but not limited to:

        1. Administrative Requirements set forth in 2 CFR Part 200, including, without limitation:

            a. Using Grant Funds only in accordance with applicable cost principles described in 2 CFR Subpart E, including that costs allocable to this Grant may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations or the terms of federal awards or other reasons;

            b. Subrecipient must establish a Conflict of Interest policy applicable to any procurement contract or subawards made under this Agreement in accordance with 2 CFR 200.112. Conflicts of Interest must be disclosed in writing to the OEM within 5 calendar days of discovery including any information regarding measures to eliminate, neutralize, mitigate or otherwise resolve the conflict of interest.

        2. USA Patriot Act of 2001, which amends 18 USC §§ 175-175c.

        3. Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 USC 2225(a).

        4. False Claims Act & Program Fraud Civil Remedies, 31 USC 3729, prohibiting recipients of federal payments from submitting a false claim for payment. *See* 38 USC 3801-3812 detailing administrative remedies for false claims and statements made.

        5. Whistleblower Protection Act, 10 USC §§ 2409 and 2324 and 41 USC §§ 4712, 4304 and 4310 requiring compliance with whistleblower protections, as applicable.

        6. No supplanting. Grant Funds under this Agreement shall not replace funds that have been budgeted for the same purposes through non-Federal sources. Subrecipient may be required to demonstrate and document that a reduction in non-Federal resources occurred for reasons other

than receipt or expected receipt of Federal funds. Any project cost allocable to this Agreement may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons.

D. **Non-discrimination and Civil Rights Compliance.** Subrecipient, and all of its contractors and subcontractors, assures compliance with all applicable nondiscrimination laws, including, but not limited to:

   a. Title VI of the Civil Rights Act of 1964, 42 USC § 2000d et seq., as amended, and related nondiscrimination regulations in 6 CFR Part 21 and 44 CFR Part 7.

   b. Title VIII of the Civil Rights Act of 1968, 42 USC § 3601, as amended, and implementing regulations at 6 CFR Part 21 and 44 CFR Part 7.

   c. Titles I, II, and III of the Americans with Disabilities Act of 1990, as amended, 42 USC §§ 12101 – 12213.

   d. Age Discrimination Act of 1975, 42 USC § 6101 et seq.

   e. Title IX of the Education Amendments of 1972, as amended, 20 USC § 1681 et seq.

   f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794, as amended.

E. **Services to Limited English Proficient (LEP) Persons**. Subrecipient, and any of its contractors and subcontractors agrees to comply with the requirements Title VI of the Civil Rights Act of 1964 and Executive Order 13166, improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin and resulting agency guidance, national origin discrimination includes discrimination on the basis of LEP. To ensure compliance with Title VI, Subrecipient must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Subrecipient is encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities.   For assistance additional information regarding LEP obligations, please see http://www.lep.gov.

F. **Procurement of Recovered Materials.** Subrecipient must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Recovery and Conservation Act and in accordance with Environmental Protection Agency guidelines at 40 CFR Part 247.

G. **SAFECOM.** If the Grant Funds are for emergency communication equipment and related activities, Subrecipient must comply with SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

H. **Drug Free Workplace Requirements.** Subrecipient agrees to comply with the requirements of the Drug-Free Workplace Act of 1988, 41 USC § 701 et seq., as amended, and implementing regulations at 2 CFR Part 3001 which require that all organizations receiving grants (or subgrants) from any Federal agency agree to maintain a drug-free workplace. Subrecipient must notify this office if an employee of Subrecipient is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment.

I. **Human Trafficking (2 CFR Part 175).** Subrecipient must comply with requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, 22 USC § 7104, as amended and 2 CFR § 175.15.

J. **Fly America Act of 1974**. Subrecipient agrees to comply with the requirements of the Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 USC § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, (49 USC § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to the Comptroller General Decision B138942.

K. **Activities Conducted Abroad**. Subrecipient agrees to comply with the requirements that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

L. **Acknowledgement of Federal Funding from DHS**. Subrecipient agrees to comply with requirements to acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.

M. **Copyright.** Subrecipient shall affix the applicable copyright notices of 17 USC § 401 or 402 and an acknowledgement of Government sponsorship (including Subgrant number) to any work first produced under an award unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations). For any scientific, technical, or other copyright work based on or containing data first produced under this Agreement, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, Subrecipient grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works.

N. **Patents and Intellectual Property Rights.** Unless otherwise provided by law, Subrecipient is subject the Bayh-Dole Act, 35 USC § 200 et seq., as amended, including requirements governing the development, reporting and disposition of rights to inventions and patents resulting from financial assistance awards, 37 CFR Part 401, and the standard patent rights clause in 37 CFR § 401.14.

O. **Use of DHS Seal, Logo and Flags.** Subrecipient agrees to obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

P. **Personally Identifiable Information (PII).** Subrecipient, if it collects PII, is required to have a publically available privacy policy that described what PII they collect, how they use it, whether they share it with third parties and how individuals may have their PII corrected where appropriate.

Q. **Federal Debt Status.** Subrecipient shall be non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, benefit

overpayments and any amounts due under Section 11.c of this Agreement. See OMB Circular A-129 for additional information and guidance.

R. Energy Policy and Conservation Act. Subrecipient must comply with the requirements of 42 USC § 6201 which contains policies relating to energy efficiency that are defined in the state energy conservation plan issues in compliance with the Act

S. Lobbying Prohibitions. Subrecipient must comply with 31 USC §1352, which provides that none of the funds provided under an award may be expended by the subrecipient to pay any person to influence, or attempt to influence and officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action concerning the award or renewal.

T. Terrorist Financing. Subrecipient must comply with US Executive Order 13224 and US law that prohibits transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of Subrecipients to ensure compliance with the EO and laws.

U. Faith-Based Organizations. Subrecipient must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statues, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.

V. National Environmental Policy Act. Subrecipient must comply with the requirements of the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which requires Subrecipient to use all practicable means within its authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

W. Federal Leadership on Reducing Text Messaging while Driving. Subrecipient is encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the federal government.

X. Environmental Planning and Historic Preservation. DHS/FEMA funded activities that may require an EHP review are subject to FEMA's Environmental Planning and Historic Preservation review process. If ground disturbing activities occur during construction, sub-recipient will monitor ground disturbance, and if any potential archeological resources are discovered, applicant will immediately cease work in that area and notify Oregon Office of Emergency Management, and DHS/FEMA.

EXHIBIT C

Subagreement Insurance Requirements

GENERAL.

Subrecipient shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences; and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to OEM. Subrecipient shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Subrecipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Subrecipient shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Subrecipient permit work under a subagreement when Subrecipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a subagreement in which Subrecipient is a Party.

TYPES AND AMOUNTS.

i. WORKERS COMPENSATION. Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers' liability insurance with coverage limits of not less than $500,000 must be included.

ii. COMMERCIAL GENERAL LIABILITY.

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to OEM. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by OEM:

Bodily Injury, Death and Property Damage:

$500,000 per occurrence, (for all claimants for claims arising out of a single accident or occurrence).

iii. AUTOMOBILE Liability Insurance: Automobile Liability.

Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by OEM:

Bodily Injury, Death and Property Damage:

$500,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

ADDITIONAL INSURED. The Commercial General Liability Insurance and Automobile Liability insurance must include OEM, its officers, employees and agents as Additional Insureds but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

"TAIL" COVERAGE. If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of : (i) the contractor's completion and Subrecipient's acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and OEM may grant approval of the maximum "tail " coverage period reasonably available in the marketplace. If OEM approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR CHANGE. The contractor or its insurer must provide 30 days' written notice to Subrecipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE. Subrecipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage. INSURANCE REQUIREMENT REVIEW. Recipient agrees to periodic review of insurance requirements by OEM under this Agreement and to provide updated requirements as mutually agreed upon by OEM and Recipient.

OEM ACCEPTANCE. All insurance providers are subject to OEM acceptance. If requested by OEM, Recipient shall provide complete copies of its Contractors' insurance policies, endorsements, self-insurance documents and related insurance documents to OEM's representatives responsible for verification of the insurance coverages required under this Exhibit C.

Exhibit D

Information required by 2 CFR 200.331(a)

1.   Federal Award Identification:

(i)   Sub-recipient name (which must match registered name in DUNS): Clackamas County

(ii)   Sub-recipient's DUNS number: 096992656

(iii)   Federal Award Identification Number (FAIN): EMW-2020-SS-00091-S01

(iv)   Federal Award Date: September 1, 2020

(v)   Sub-award Period of Performance Start and End Date: From October 1, 2020 to September 30, 2022

(vi)   Amount of Federal Funds Obligated by this Agreement: $36,600

(vii)   Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this agreement *: $36,600

(viii)   Total Amount of Federal Award committed to the Subrecipient by the pass-through entity: $36,600

(ix)   Federal award project description: State Homeland Security Program Grant plays an important role in the implementation of the National Preparedness System by supporting the building, sustainment, and delivery of core capabilities essential to achieving the National Preparedness Goal of a secure and resilient Nation.

(x)   (a) Name of Federal awarding agency: U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA)
(b) Name of Pass-through entity: Oregon Military Department, Office of Emergency Management
(c) Contact information for awarding official: Andrew Phelps, Director – Oregon Office of Emergency Management, PO Box 14370, Salem, OR 97309-5062

(xi)   CFDA Number and Name: 97.067 Homeland Security Grant Program
Amount: $7,787,500

(xii)   Is Award R&D?   No

(xiii)   Indirect cost rate for the Federal award: 12%

2.   Subrecipient's indirect cost rate: 0%
*The Total amount of Federal Funds Obligated to the Subrecipient by the pass-through entity is the Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity during the current fiscal year.

Nancy Bush
Director

Disaster Management   T 503-655-8378
2200 Kaen Road
Oregon City, OR 97045   clackamas.us

December 17, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Master Subscription Agreement with ESO for an electronic patient care records (ePCRs) software.

Purpose/Outcomes	To standardize EMS equipment and tools utilized across all EMS agencies and improve patient coordinated and quality care using interoperable technology. Due to COVID-19 this project was escalated through the EOC to facilitate the tracking and monitoring of infectious disease through a common EMS electronic patient care records (ePCRs) software.
Dollar Amount and Fiscal Impact	Contract maximum value is $447,665.
Funding Source	Funding through EMS system enhance funds - No County General Funds are involved.
Duration	Effective upon signature and terminates on December 31, 2025
Previous Board Action	No Previous Board Action
Strategic Plan Alignment	1. Improved Community Safety and Health 2. Ensure safe, healthy and secure communities
Counsel Review	County counsel has reviewed and approved this document on October 19, 2020 - AN
Procurement Review	1. Was the item processed through Procurement? yes ☑ no ☐
Contact Person	Philip Mason-Joyner, EOC Command – (503) 742-5956
Contract No.	2856

BACKGROUND:
The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of a Master Subscription Agreement with ESO for an electronic patient care records (ePCRs) software.

Clackamas County's EMS Strategic Plan, approved by the Board of County Commissioners in December 2018, identifies equipment standardization, as a prioritized need. The EMS Strategic Plan Taskforce has selected electronic patient care records (ePCRs) as the first item towards standardizing. Standardization of this equipment has a huge benefit to patients in assuring coordinated and quality care is provided with interoperable technology.

EMS system enhancement funds will pay for the first year. Thereafter, the participating agencies will reimburse the county for their share of the annual fees.

Due to COVID-19 this project was escalated through the EOC to facilitate the tracking and monitoring of infectious disease through a common EMS electronic patient care records (ePCRs) software

Contract maximum value is $447,665.

This contract is effective upon signature and continues through December 31, 2025.

RECOMMENDATION:
Staff recommends the Board of County Commissioners approve the attached Master Subscription Agreement with ESO for an electronic patient care records (ePCRs) software, to complete the transaction, authorize the Procurement Office to execute any other needed instruments and purchase orders in order to complete the term.

Respectfully submitted,

Nancy Bush,
Disaster Management

Placed on the _____ agenda by the Procurement Division.

ORDER INSTRUCTIONS

1. <u>Fill in Contact Info Below</u>

Contact	Name	Email	Phone
Primary Business Contact	Bill Conway	WConway@clackamas.us	503-313-9170
Invoicing Contact	Jenyfer Smith	JenyferSmith@clackamas.us	503-742-5945
Legal Contact			
Software Administrator Contact			
Privacy/HIPAA Contact			
Tax Exempt?	YES OR NO	If YES, return Exempt Certificate with Agreement	
Purchase Order Required?	YES OR NO	If YES, return PO with Agreement	

2. <u>Sign page 5.</u>

3. <u>Email entire contract to legal@esosolutions.com and your sales representative.</u>

4. <u>Enjoy your ESO Software</u>

MASTER SUBSCRIPTION AND LICENSE AGREEMENT

This Master Subscription and License Agreement (this **"Agreement"**) is entered into as of date of last signature (**"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 Clackamas County (**"Customer"**) having its principal place of commercial management at 2051 Kaen Rd., Oregon City, OR 97060. 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 shall have the meanings below:

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

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

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

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

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

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

"Feedback" refers to any suggestion or idea for improving or otherwise modifying ESO's products or services.

"Incident" refers to a locked and uploaded record within the system on a per-encounter basis, regardless of the number of patients involved in said individual encounter.

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

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

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

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

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

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

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

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

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

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

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

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

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

"Support Services" means those services described in Exhibit B.

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

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

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

"Use Restrictions" means the restrictions imposed on Customer's use of Software as described in Section 3.3.

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

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

3. **LICENSE/SUBSCRIPTION TO SOFTWARE**

   3.1. <u>Grant of Subscription: SaaS.</u> For SaaS, during the Term Customer may access and use the SaaS and Reporting Services, in such quantities as are set forth on the applicable Software Schedule, subject to Customer's compliance with the Use Restrictions and other limitations contained in this Agreement.

   3.2. <u>Grant of License: Licensed Software.</u> 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 Software Schedule 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. <u>Use Restrictions.</u> 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 Software Schedule).

3.4. Ownership. 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. Third-Party Software and Services. 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.

3.6. Third-Party Data. 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 Software Schedule, (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.

3.7. New Versions & Sunset. If ESO releases a New Version of Licensed Software, 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.

4. HOSTING, SLA & SUPPORT SERVICES

4.1. Hosting & Management. Customer shall be solely responsible for hosting and managing any Licensed Software. ESO shall be responsible for hosting and managing any SaaS.

4.2. Service Level Agreement. If an Outage, excluding Scheduled Downtime (as defined below), results in the service level uptime falling below 99% for three months in any rolling 12-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. Scheduled Downtime. ESO will provide reasonable notice to the Customer (Software Administrator Contact or otherwise) of Scheduled Downtime (usually at least 72 hours in advance), and will plan Scheduled Downtime to occur during non-peak hours (midnight to 6 a.m. Central Time). Scheduled Downtime shall never constitute a failure of performance or Outage by ESO.

4.4. Support and Updates. 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. Fees. In consideration of the rights granted, Customer agrees to pay ESO the fees for the Software and Professional Services as set forth in the Software Schedule(s) or SOW(s) (collectively, "*Fees*"). The Fees are non-cancelable and non-refundable, except as expressly provided herein. Customer shall pay all invoices within 30 days of receipt.

5.2. Third-Party Payer. 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), and (iv) Customer shall remain responsible for payment if the Third-Party Payer does not pay the Fees.

5.3. Uplift on Renewal. Except in the instance of Overages (as defined below), Fees for Software, which recur annually, shall increase by 3% each year this Agreement is in effect.

5.4. Taxes and Fees. 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. Appropriation of Funds. If Customer is a city, county or other government entity, Customer will have the right to 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. Usage Monitoring. Customer is solely responsible for its own adherence to volume and use limitations indicated on the applicable Software Schedule. ESO may monitor Customer and Customer Affiliate's aggregated usage of the Software, and if the aggregated usage exceeds the level for which Customer has paid in the applicable Software Schedule (an "*Overage*"), Customer shall owe ESO the Fee corresponding to such usage level based on the Software Schedule (or if none, ESO's then-current rates). ESO may invoice for Overages immediately.

6. TERM AND TERMINATION

6.1. Term. The term of this Agreement (the "*Term*") shall commence on the Effective Date and continue for the period set forth in the applicable Software Schedule (or, if none, for one year); provided that the Term shall be automatically extended to match the end of the last subscription period or license period of any Software provided hereunder. The Term may only be renewed by execution of a mutually agreeable amendment to this Agreement.

6.2. Termination for Cause. Either party may terminate this Agreement or any individual Software Schedule 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. Effect of Termination.

6.3.1. If Customer terminates this Agreement or any Software Schedule as a result of ESO's material breach, then to the extent that Customer has prepaid any Fees, ESO shall refund to Customer any prepaid Fees on a pro-rata basis to the extent such Fees are attributable to the period after the latter to occur of the (i) termination date or (ii) the date on which Customer actually ceases use of the Software.

6.3.2. Upon termination of this Agreement or any Software Schedule, 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 received discounts for any of the two years prior to the date of termination, Customer shall promptly pay ESO's invoice recouping such discounts.

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. If Customer requests its data within 60 days of expiration or termination of this Agreement, ESO will provide Customer its Customer Data in a searchable .pdf format. Customer acknowledges that ESO is under 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. ESO represents and warrants that the Software will perform in material accordance with any Documentation provided by ESO.

7.2. Due Authority. Each party's execution, delivery and performance of this Agreement and each agreement or instrument contemplated by this Agreement has been 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.

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. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ESO DOES NOT REPRESENT OR WARRANT THAT CUSTOMER DATA WILL REMAIN PRIVATE OR SECURE, OR THAT THE SOFTWARE (X) WILL PERFORM WITHOUT INTERRUPTION OR ERROR, OR (Y) IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION. 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; or (v) 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 in accordance with applicable law and 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 but is not obligated to defend the disclosing party's position that any requested information is protected from disclosure under applicable law. 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 terms shall reside in the CLACKAMAS COUNTY GOVERNMENTAL CONTRACTING ADDENDUM Contract # 2856.

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 Software Schedule, in which case ESO will refund any pre-paid Fees on a pro-rata basis for such Software Schedule. Notwithstanding the foregoing, ESO shall have no obligation hereunder for any claim resulting or arising from (x) Customer's breach of this Agreement; (y) modifications made to the Software that were not performed or provided by or on behalf of ESO or (z) the combination, operation or use by Customer (and/or anyone acting on Customer's behalf) of the Software in connection with any other product or service (the combination or joint use of which causes the alleged infringement). This Section 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 $3,000,000.

b) DAMAGES ARISING FROM A PARTY'S BREACH OF CONFIDENTIALITY OBLIGATIONS (INCLUDING A BREACH OF OBLIGATIONS REGARDING PROTECTED HEALTH INFORMATION), SHALL BE LIMITED TO $4,000,000.

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 THREE TIMES 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: (a) access, process, or otherwise use Customer Data; and (b) intentionally grant any third-party access to Customer Data, including without limitation ESO's other customers, except subcontractors that are subject to a reasonable nondisclosure agreement or authorized participants in the case of Interoperability Software. Notwithstanding the foregoing, ESO may 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 to 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. Risk of Exposure. Customer acknowledges and agrees that hosting data online involves risks of unauthorized disclosure and that, in accessing and using the SaaS, Customer assumes such risks. Customer has sole responsibility for obtaining, maintaining, and securing its network connections. ESO makes no representations to Customer regarding the reliability, performance or security of any network or provider.

14. **FEEDBACK RIGHTS & WORK PRODUCT**

14.1. Feedback Rights. ESO does not agree to treat as confidential any Feedback that Customer provides to ESO. Nothing in this Agreement will restrict ESO's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensation or crediting Customer. Feedback will not constitute Confidential Information, even if it would otherwise qualify as such pursuant to Section 9 (Confidential Information).

14.2. 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 SOW 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. 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. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin.

15.3. Excluded Parties List. ESO agrees to immediately 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. ESO provides the Software to allow Customer (and its respective 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.

16.2. 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.

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. 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 terminate Software products and services. Notwithstanding the foregoing, a ratification of rate or tier increase for Software products and services then in use by Customer shall be done by an amendment to the CLACKAMAS COUNTY GOVERNMENTAL CONTRACTING ADDENDUM Contract # 2856.

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 Software Schedule.

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 have waived any rights under this Agreement unless it is 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 Oregon, 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. 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.

17.14. 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).

17.15. 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.

17.16. 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:_____
                (signature)

Name:_____
                (print name)

Title:_____
                (print title)

Clackamas County

By:_____
                (signature)

Name:_____
                (print name)

Title:_____
                (print title)

<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)</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.esosolutions.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.esosolutions.com/software/personnel-management).

    2.3. ESO Fire is a SaaS software application for NFIRS reporting (http://www.esosolutions.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:

<center>N/A</center>

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

EHR

Product	Volume	Total	Fee Type
ESO EHR Suite - Multi-Agency	26551 Incidents	$42,738.00	Recurring
EHR CAD Integration - Multi-Agency	26551 Incidents	$4,994.00	Recurring
EHR Cardiac Monitor Integration - Multi-Agency	26551 Incidents	$2,369.00	Recurring
EHR Billing Interface - Multi-Agency	26551 Incidents	$1,244.00	Recurring
EHR Fax - Multi-Agency	26551 Incidents	$3,375.00	Recurring
EHR - First Watch Interface	1	$2,995.00	Recurring
NEMSIS Data Import - recurring	5000 Incidents	$3,995.00	Recurring

Analytics

Product	Volume	Total	Fee Type
Medical Director Oversight Account	26551 Incidents	$1,695.00	Recurring

Total Recurring	$	63,405.00
Total One-Time	$	0.00
TOTAL	$	63,405.00

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

    6.1. Training 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.

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.esosolutions.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@esosolutions.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.

eso

CUSTOMER CONTACT

End User	Clackamas County Public Health Division
Name	Philip Mason-Joyner
Email	pmason@clackamas.us
Phone	(503) 742-5956

BILLING CONTACT

Payor	Clackamas County Public Health Division
Name	
Email	
Phone	

Address	2051 Kaen Road Suite 367
	Oregon City OR, 97045
Billing Frequency	Annual
Initial Term	12 months

EHR

Product	Volume	Total	Fee Type
ESO EHR Suite - Multi-Agency	26551 Incidents	$42,738.00	Recurring
EHR CAD Integration - Multi-Agency	26551 Incidents	$4,994.00	Recurring
EHR Cardiac Monitor Integration - Multi-Agency	26551 Incidents	$2,369.00	Recurring
EHR Billing Interface - Multi-Agency	26551 Incidents	$1,244.00	Recurring
EHR Fax - Multi-Agency	26551 Incidents	$3,375.00	Recurring
EHR - First Watch Interface	1	$2,995.00	Recurring
NEMSIS Data Import - recurring	5000 Incidents	$3,995.00	Recurring

Analytics

Product	Volume	Total	Fee Type
Medical Director Oversight Account	26551 Incidents	$1,695.00	Recurring

Total Recurring	$	63,405.00
Total One-Time	$	0.00
TOTAL	$	63,405.00

*Additional fees may be applied by Customer's billing or CAD vendor for certain integrations or interfaces, and Customer is encouraged to discuss this with the applicable vendor.

TERMS AND CONDITIONS:

1.   If the Customer indicated above has an ESO Master Subscription and License Agreement (MSLA) dated on or after February 20, 2017, then that MSLA will govern this Quote. **Otherwise, Customer intends and agrees that this Quote adopts and incorporates the terms and conditions of the MSLA and associated HIPAA business associate agreement hosted at the following web address, and that the products and services ordered above are subject thereto:**

http://bit.ly/MSLAW

2.   The Effective Date of this Quote shall be the final date of signature.

3.   If Customer has selected a third party to pay fees on their behalf, the applicable fees above shall be invoiced to the third party on Customer's behalf.

Clackamas County

_____
[Signature]

_____
[Print Name]

_____
[Title]

_____
[Today's Date]

For EHR, Analytics, 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.

EHR

Product	Description
ESO EHR Suite - Multi-Agency	Patient care reporting suite, includes EHR web and mobile client, Quality Management, AdHoc Reports, Analytics, Patient Tracker. Allows for unlimited users, unlimited mobile applications, live support, state and federal data reporting, ongoing weekly web training, software updates and upgrades.
EHR CAD Integration - Multi-Agency	Enables integration of CAD data into EHR mobile and web application. Ongoing maintenance included. Additional fees from your CAD vendor may apply.
EHR Cardiac Monitor Integration - Multi-Agency	Enables import of cardiac monitor data via local or cloud integration. Ongoing maintenance included. Unlimited heart monitors.
EHR Billing Interface - Multi-Agency	Enables integration of discrete ePCR data into third-party billing software. Ongoing maintenance included.
EHR Fax - Multi-Agency	Enables faxing of patient care records to destination facilities.
EHR - First Watch Interface	Enables transfer of EHR data to First Watch.
NEMSIS Data Import - recurring	Import of legacy NEMSIS data from 3rd party vendor into ESO for reporting and record retrieval. Some limitations may apply.

Analytics

Product	Description
Medical Director Oversight Account	Umbrella account for use by a medical director to access records and Analytics across multiple agencies, includes Patient Tracker, Analytics and AdHoc Reporting.

eso

Please fill in your contact information below:

	Name	Email	Phone
Primary Business Contact			
Invoicing Contact			
Legal Contact			
Software Administrator Contact			
Privacy HIPAA Contact			
Tax Exempt	YES OR NO	If YES, return Exempt Certificate with Agreement	
Purchase Order Required?	YES OR NO	If YES, return PO with Agreement	

Please email the signed sales order to legal@eso.com and your sales representative.

EXHIBIT C
ADDITIONAL FEDERAL TERMS AND CONDITIONS

As used herein, "Contractor" means ESO Solutions, Inc., and "County" means Clackamas County, a political subdivision of the State of Oregon.

1. The County intends that all or a portion of the consideration paid to Contractor will be eligible for reimbursement by one or more federal agencies including, but not limited to, the Federal Emergency Management Agency ("FEMA"). This Contract is subject to the additional terms and conditions required by federal law for a federal award. All terms and conditions required under applicable federal law for a federal reward including, but no limited to, 2 C.F.R. § 200.326 and 2 C.F.R. § Pt. 200, App. II, are hereby incorporated by this reference herein.

2. Termination. This Contract may be terminated by mutual agreement of the parties or by the County for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor; or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County, provided that the County shall pay to the Contractor any prorated fees for the use of the software prior to termination.

3. By execution of this Contract, Contractor hereby certifies that it and all subcontractors will comply with (i) all Federal statutes relating nondiscrimination, including, but not limited to: Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis race, color or national origin; Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 et seq.), which prohibits discrimination on the basis of sex; the Age Discrimination Act of 1975, as amended (29 U.S.C. §§6101 et seq.), which prohibits discrimination on the basis of age; the Rehabilitation Act of 1973, as amended (29 U.S.C. §§793 et seq.), which prohibits discrimination against requires affirmative action for qualified individuals with disabilities; the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (42 U.S.C. §§4541 et seq.), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; §§523 and 527 of the Public Health Service Act of 1912 (4s U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; Title VII of the Civil Rights Act of 1969 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; any other discrimination provisions in the specific statute(s) under which for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply; (ii) will comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352 et. seq.), and shall file the required certification if the award is $100,000 or more; and (iii) will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

4. If this Contract involves a federal award that meets the definition of a "funding agreement" under 37 CFR § 401.2 (a), and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

5. If this Agreement is in excess of $150,000, Contractor certifies that it and all subcontractors will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. Violations shall be reported to the awarding Federal Department and the appropriate Regional Office of the

Environmental Protection Agency. Contractor shall include these requirements in all contracts with subcontractors receiving more than $150,000.

6. If this Agreement is in excess of $100,000 and involves the employment of mechanics or laborers, Contractor and all subcontractors will comply with all applicable standards, orders or regulations issued pursuant to the Contract Work Hours and Safety Standards Act 40 USC §§3701 et seq. as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. Contractor shall include and require all providers to include in all contracts with subcontractors receiving more than $100,000, language requiring the subcontractor to comply with the federal laws identified in this section.

7. Contractor shall comply with 2 CFR 180.220 and 925. These regulations restrict sub-awards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs or activities. Contractor is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Contractor may access the Excluded Parties List System at https://www.sam.gov. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award. Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. 180.995) or its affiliates (defined at 2 C.F.R. 180.905) are excluded (defined at 2 C.F.R. 180.940) or disqualified (defined at 2 C.F.R. 180.935). The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction that Contractor enters into. This certification is a material representation of fact relied upon by the County. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, then in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

8. Record Retention. Contractor will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings that are directly related to this Agreement for a minimum of six (6) years, or such longer period as may be required by the federal agency or applicable state law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later, according to 2 CFR 200.333-337. Contractor agrees to provide to the County, to the FEMA Administrator, to the Comptroller General of the United States, or to any of their authorized representatives, access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
The Contractor agrees to provide the FEMA Administrator or the Administrator's authorized representative's access to construction or other work sites pertaining to the Work being completed under the Contract. In compliance with the Disaster Recovery Act of 2018, the Department of Resources Recycling and Recovery and the Contractor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

9. DHS Seal, Logo, and Flags: Contractor shall not use the DHS seal(s), logos, crests, or reproductions of

flags or likenesses of DHS agency officials without specific FEMA pre-approval.

10. Compliance with Federal Law, Regulations, and Executive Orders: This is an acknowledgement that FEMA financial assistance may be used to fund this Contract only. Contractor will comply with all federal law, regulations, executive orders, FEMA policies, procedures, and directives.

11. No Obligation by Federal Government: The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

12. Program Fraud and False or Fraudulent Statements or Related Acts: Contractor acknowledges the 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.

13. Contractor will comply with all requirements of 2 CFR 200.321.

14. Procurement of Recovered Materials (Reference 2 CFR 200.322): Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.

15. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of $100,000 or more shall file the required certification, set forth below. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Contractor hereby makes the following certification:

Byrd Anti-Lobbying Amendment Certification
for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The Contractor, ESO Solutions, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

ESO

_____

Signature of Contractor's Authorized Official

_____

Name and Title of Contractor's Authorized Official

_____

Date

EXHIBIT D
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is entered into as of **the date signed** ("Effective Date") by and between **Clackamas County Health Housing & Human Services Department** ("Covered Entity") and **ESO Solutions, Inc.** ("Business Associate") in conformance with the Health Insurance Portability and Accountability Act of 1996, and its regulations ("HIPAA").

RECITALS

Whereas, the Covered Entity has engaged the services of the Business Associate, as defined under 45 CFR §160.103, for or on behalf of the Covered Entity;

Whereas, the Covered Entity may wish to disclose Individually Identifiable Health Information to the Business Associate in the performance of services for or on behalf of the Covered Entity as described in a Services Agreement ("Agreement");

Whereas, such information may be Protected Health Information ("PHI") as defined by the HIPAA Rules promulgated in accordance with the Administrative Simplification provisions of HIPAA;

Whereas, the Parties agree to establish safeguards for the protection of such information;

Whereas, the Covered Entity and Business Associate desire to enter into this Business Associate Agreement to address certain requirements under the HIPAA Rules;

Now, Therefore, the parties hereby agree as follows:

SECTION I – DEFINITIONS

1.1   "Breach" is defined as any unauthorized acquisition, access, use or disclosure of Unsecured PHI, unless the Covered Entity demonstrates that there is a low probability that the PHI has been compromised.   The definition of Breach excludes the following uses and disclosures:

    1.1.1   Unintentional access by a Covered Entity or Business Associate in good faith and within an Workforce member's course and scope of employment or placement;

    1.1.2   Inadvertent one time disclosure between Covered Entity or Business Associate Work force members; and

    1.1.3   The Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain the information.

1.2   "Covered Entity" shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §160.103.

1.3   "Designated Record Set" shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §164.501.

1.4   "Effective Date" shall be the Effective Date of this Business Associate Agreement.

1.5   "Electronic Protected Health Information" or "Electronic PHI" shall have the meaning given to such term at 45 CFR §160.103, limited to information of the Covered Entity that the Business Associate creates, receives, accesses, maintains or transmits in electronic media on behalf of the Covered Entity under the terms and conditions of this Business Associate Agreement.

1.6   "Health Care Operations" shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §164.501.

1.7   "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules codified at 45 CFR Part 160 and Part 164.

1.8   "Individual" shall have the meaning given to such term in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

1.9   "Individually Identifiable Health Information" shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §160.103.

1.10   "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (ii) that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual, and shall have the meaning given to such term under the HIPAA Rules, 45 CFR §160.103 and §164.501.

1.11   "Protected Information" shall mean PHI provided by the Covered Entity to Business Associate or created, maintained, transmitted or received by Business Associate on Covered Entity's behalf.

1.12   "Required by Law" shall have the meaning given to such phrase in 45 CFR §164.103.

1.13   "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

1.14   "Security Incident" shall have the meaning given to such phrase in 45 CFR §164.304.

1.15   "Unsecured Protected Health Information" shall mean protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in accordance with 45 CFR §164.402.

1.16   "Unsuccessful Security Incidents" shall mean a security incident that does not result in unauthorized access, use, disclosure, modification or destruction of information or interference with system operations.

1.17   "Workforce" means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a Covered Entity or Business Associate, is under the direct control of such Covered Entity or Business Associate, whether or not they are paid by the Covered Entity or Business Associate.

SECTION II – OBLIGATIONS AND ACTIVITIES OF THE BUSINESS ASSOCIATE

The Business Associate agrees to the following:

2.1   Not to use or further disclose PHI other than as permitted or required by this Business Associate Agreement or as Required by Law;

2.2   To use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement;

2.3   To mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this Business Associate Agreement;

2.4   To report within 5 business days to the Covered Entity any use or disclosure of PHI not provided for by this Business Associate Agreement of which it becomes aware, including any Security Incident of which it becomes aware;

2.5   In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees in writing to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such PHI;

2.6   To provide access, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to the Covered Entity or, as directed by the Covered Entity, to the Individual or the Individual's designee as necessary to meet the Covered Entity's obligations under 45 CFR §164.524; provided, however, that this Section 2.6 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;

2.7   To make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of the Covered Entity or an Individual, and in the time and manner designated by the Covered Entity; provided, however, that this Section 2.7 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;

2.8   To make internal practices, books and records, including policies and procedures on PHI, relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of, the Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary's determining the Covered Entity's and the Business Associate's compliance with the HIPAA Rules. Notwithstanding the foregoing, in no event shall the Covered Entity or agent of the Covered Entity be permitted to view, access, or retain (or potentially view, access, or retain) information which Business Associate reasonably determines: i) is a risk to the security of its software if exposed; ii) pertains to its software or services and is proprietary, trade secret, or protected by copyright law; or iii) constitutes the protected information of Business Associate's

other customers, including but not limited to Protected Health Information, as defnied by applicable federal law;

2.9   To document such disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;

2.10   To provide to the Covered Entity or an Individual, within a reasonable time but no later than 5 business days, information collected in accordance with Section 2.9 of this Business Associate Agreement, to permit the Covered Entity to respond to a request by an accounting of disclosures of PHI in accordance with 45 CFR §164.528;

2.11   That if it creates, receives, maintains, or transmits any Electronic PHI on behalf of the Covered Entity, it will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI, and it will ensure that any agents (including subcontractors) to whom it provides such Electronic PHI agrees to implement reasonable and appropriate security measures to protect the information. The Business Associate will report to the Covered Entity any Security Incident of which it becomes aware;

2.12   To report to Covered Entity any attempted or successful unauthorized access, use, disclosure, modification, or destruction of Covered Entity's ePHI or interference with Business Associate's system operations in Business Associate's information systems ("Security Incident" as defined by 45 C.F.R. § 164.304), of which Business Associate becomes aware. With regard to a Security Incident, Business Associate and Covered Entity recognize and agree that the significant number of meaningless attempts to, without authorization, access, use, disclose, modify or destroy ePHI will make real-time reporting formidable. Therefore, Business Associate and Covered Entity agree to the following reporting procedures for Security Incidents that result in unauthorized access, use, disclosure, modification or destruction of information or interference with system operations ("Successful Security Incidents") and for Security Incidents that do not so result ("Unsuccessful Security Incidents").

For Unsuccessful Security Incidents, Business Associate and Covered Entity agree that this Agreement constitutes notice from Business Associate of such Unsuccessful Security Incidents. By way of example, Covered Entity and Business Associate consider the following to be illustrative of Unsuccessful Security Incidents when they do not result in unauthorized access, use, disclosure, modification or destruction of ePHI or interference with an information system:

    1. Pings on Business Associate's firewall,

    2. Port Scans,

    3. Attempts to log on to a system or enter a database with an invalid password or username, and/or

    4. Denial-of-service attacks that do not result in a server being taken off-line.

For Successful Security Incidents, Business Associate shall give notice promptly to Covered Entity in accordance with Section 2.4;

2.13 To retain records related to the PHI hereunder for a period of six (6) years unless the Business Associate Agreement is terminated prior thereto. In the event of termination of this Business Associate Agreement, the provisions of Section V of this Business Associate Agreement shall govern record retention, return or destruction;

2.14 To promptly notify the Covered Entity of a Breach of Unsecured PHI as soon as practicable, but in no case later than 5 business days, after the discovery of such Breach in accordance with 45 CFR §164.410. A Breach shall be treated as discovered as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or agent of Business Associate. The notification shall include, to the extent possible, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach in addition to the information required in Section V. In addition, Business Associate shall provide the Covered Entity with any other available information that the Covered Entity is required to include in the notification to the individual under 45 CFR §164.404(c); and

2.15 To the extent Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

SECTION III – THE PARTIES AGREE TO THE FOLLOWING PERMITTED USES AND   DISCLOSURES BY THE BUSINESS ASSOCIATE:

3.1 Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity's minimum necessary policies and procedures.

3.2 Except as otherwise limited in this Business Associate Agreement, the Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, the Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by the Covered Entity; and,

3.3 Except as otherwise limited in this Business Associate Agreement, the Business Associate may:

   a. **Use for management and administration**.   Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate; and,

   b. **Disclose for management and administration**. Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are

Required by Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

c. Business Associate may aggregate and de-identify PHI and/or create limited data sets for use in research, evaluation and for publication or presentation of patient care quality improvement practices and outcomes. The Parties understand and agree that such aggregated and de-identified data is no longer PHI subject to the provisions of HIPAA and agree that Business Associate may retain such limited data sets indefinitely thereafter. Business Associate agrees that it will comply with all terms of this Agreement with respect to the limited data sets and that it shall not re-identify or attempt to re-identify the information contained in the limited data set, nor contact any of the individuals whose information is contained in the limited data set.

SECTION IV – NOTICE OF PRIVACY PRACTICES

4.1   If requested, the Covered Entity shall provide the Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR §164.520, as well as any changes to such notice. Covered Entity shall (a) provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures; (b) notify the Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restrictions may affect the Business Associate's use or disclosure of PHI; (c) not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Standards if done by the Covered Entity, except as set forth in Section 3.2 above; and (d) notify Business Associate of any limitation(s) in its notice of privacy practices, prepared for compliance with 45 C.F.R. §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

SECTION V – BREACH NOTIFICATION REQUIREMENTS

5.1   With respect to any Breach, the Covered Entity shall notify each individual whose Unsecured PHI has been, or is reasonably believed by the Covered Entity to have been, accessed, acquired, used, or disclosed as a result of such Breach, except when law enforcement requires a delay pursuant to 45 CFR §164.412. This notice shall be:

a. Without unreasonable delay and in no case later than 60 calendar days after discovery of a Breach.

b. In plain language including and to the extent possible:

1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;

2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

4) A brief description of what the Covered Entity and/or Business Associate is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches; and,

5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.

c. By a method of notification that meets the requirements of 45 CFR §164.404(d).

d. Provided to the media when required under 45 CFR §164.406 and to the Secretary pursuant to 45 CFR §164.408.

5.2. Business Associate shall promptly provide any information requested by Covered Entity to provide the information described in Section 5.1.

SECTION VI – TERM AND TERMINATION

6.1 **Term**. The term of this Business Associate Agreement shall be effective as of the date set forth above in the first paragraph and shall terminate when all of the PHI created, maintained, transmitted or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned, in a searchable pdf format, to the Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

6.2 **Termination for Cause**. Upon the Covered Entity's knowledge of a material breach of this Business Associate Agreement by the Business Associate, the Covered Entity shall provide an opportunity for the Business Associate to cure the breach or end the violation. The Covered Entity shall terminate this Business Associate Agreement and the Services Agreement if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity, or immediately terminate this Business Associate Agreement if cure is not reasonably possible.

If the Business Associate fails to cure a breach for which cure is reasonably possible, the Covered Entity may take action to cure the breach, including but not limited to obtaining an injunction that will prevent further improper use or disclosure of PHI. Subject to Section 12 of the Master Subscription and License Agreement "Vendor Agreement" (Limitations of Liability), should such action be taken, the Business Associate agrees to indemnify the Covered Entity for any costs, including court costs and attorneys' fees, associated with curing the breach.

Upon the Business Associate's knowledge of a material breach of this Business Associate Agreement by the Covered Entity, the Business Associate shall provide an opportunity for the Covered Entity to cure the breach or end the violation. The Business Associate shall terminate this Business Associate Agreement and the Services Agreement if the Covered Entity does not cure the breach or end the violation within the time specified by the Business Associate, or immediately terminate this Business Associate Agreement if the Covered Entity has breached a material term of this Business Associate Agreement if cure is not reasonably possible.

6.3 **Effect of Termination**.

a. **Return or Destruction of PHI**. Except as provided in Section 6.3(b), upon termination of this Business Associate Agreement, for any reason, the Business Associate shall return (in a searchable pdf format), or if agreed to by the Covered Entity, destroy all PHI received from the Covered Entity, or created, maintained or received by the Business Associate on behalf of the Covered Entity and retain no copies. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Business Associate.

b. **Return or Destruction of PHI Infeasible**. In the event that the Business Associate determines that returning or destroying PHI is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of the PHI is infeasible, the Business Associate shall extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI. In addition, the Business Associate shall continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI to prevent use or disclosure of the PHI, for as long as the Business Associate retains the PHI.

SECTION VII – GENENERAL PROVISIONS

7.1 **Regulatory references**. A reference in this Business Associate Agreement to the HIPAA Rules or a section in the HIPAA Rules means that Rule or Section as in effect or as amended from time to time.

7.2 **Compliance with law**. In connection with its performance under this Business Associate Agreement, Business Associate shall comply with all applicable laws, including but not limited to laws protecting the privacy of personal information about Individuals.

7.3 **Amendment**. The Parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time. All amendments must be in writing and signed by both Parties.

7.4 **Indemnification by Business Associate**. Subject to Section 12 of the Master Subscription and License Agreement ("Vendor Agreement"), Business Associate shall indemnify Covered Entity and its officers, directors, employees, agents, Affiliates, successors and permitted assigns from any damages, costs, liabilities, expenses (including costs of investigation, mitigation, and notification), and fines (including reasonable and actual attorney's fees) ("Damages") in connection with any claims or actions brought by third parties against Covered Entity. The amount which Business Associate shall be required to indemnify Covered Entity for shall be determined by comparative fault, with the relevant trier-of-fact determining 1) the amount of damages each third-party claimant would be entitled to recover if comparative fault was disregarded and 2) the percentage of the total fault of the parties to each third-party claim that is allocated to Business Associate, Covered Entity, and each claimant, with the percentage allocated to Business Associate being the amount of indemnification required under this section.

7.5 **Survival**. The respective rights and obligations of Business Associate under Section II of this Business Associate Agreement shall survive the termination of the Services Agreement and this Business Associate Agreement.

7.6 **Interpretation**. Any ambiguity in this Business Associate Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.

[*Signature Page Follows*]

The Parties hereto have duly executed this Agreement as of the Effective Date as defined here above.

Business Associate
ESO Solutions, Inc.

Covered Entity
Clackamas County

By: _____
    Signature Authority

By: _____
    Signature Authority

Title: _____

Title: _____

Date: _____

Date: _____

This Oregon Governmental Contracting Addendum ("Addendum") is entered into by Clackamas County, a political subdivision of the State of Oregon ("County"), on behalf of its Health, Housing & Human Services Department and ESO Solutions, Inc. ("Contractor"). This Addendum shall be attached to, and incorporated into the ESO Solutions, Inc. Master Subscription and License Agreement ("Vendor Agreement"). As used below, "Contract" means this Addendum, the Vendor Agreement, and all other Exhibits listed in Section C. To the extent there is any conflict between the Addendum and the Vendor Agreement, the terms of this Addendum shall control. No other terms or conditions, whether from the Contractor or its partners or affiliates, including standard click through license or website terms or use of privacy policy, shall apply to the Customer unless such terms are included in this Contract.

A. **Term.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on December 31, 2025.

B. **Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum Not To Exceed (NTE) four hundred forty-seven thousand six hundred sixty-five dollars ($ 447.665.00), for accomplishing the Work required by this Contract under the base five (5) year term and two (2) additional annual option periods. The annual fee for the first five years of the contract shall not increase. Fees for each of the optional extensions thereafter, and any extensions beyond that, shall not be increased by more than two percent (2%) a year. A breakdown of the annual not to exceed pricing is listed below:

Year	Yearly NTE Amount	Total
First 5 years in base Period	$ 63,405.00	$ 317,025.00
Optional Extension 1 (Year 6)	$ 64,673.00	$ 64,673.00
Optional Extension 2 (Year 7)	$ 65,967.00	$ 65,967.00
Total NTE		$ 447,665.00

C. **Exhibits.** The following Exhibits are hereby attached to, and incorporated into this addendum by reference:

　　Exhibit A – ESO Solutions, Inc. Master Software License Agreement (Vendor Agreement)
　　Exhibit B – ESO Solutions, Inc. Price Quote
　　Exhibit C – Clackamas County Additional Federal Terms and Conditions
　　Exhibit D – Clackamas County Business Associate Agreement (BAA)

D. **County Contract Administrator.** The County Contract Administrator for this Contract is **Philip Mason-Joyner.**

E. **Travel and Other Expense.** Travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: https://www.clackamas.us/finance/terms.html.Travel expense reimbursement is not in excess of the not to exceed consideration.

F. **Invoices and Payments.** Invoices shall be submitted to**: Public Health Fiscal**; PHFiscalAP@clackamas.us Payment and late fees shall only be in accordance with ORS 293.462. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor.

G. **Insurance.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. Contractor shall provide proof of said insurance and name the County and the entities named in section R of this contract as additionally insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

Required - Workers Compensation: Contractor shall comply with the workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.126.
☒ **Required – Professional Liability:** combined single limit, or the equivalent, of not less than $1,000,000 per occurrence, with an annual aggregate limit of $2,000,000 for damages caused by error, omission or negligent acts.
☒ **Required – Commercial General Liability:** combined single limit, or the equivalent, of not less than $1,000,000 per occurrence, with an annual aggregate limit of $2,000,000 for Bodily Injury and Property Damage.
☐ **Required – Automobile Liability:** combined single limit, or the equivalent, of not less than $1,000,000 per occurrence for Bodily Injury and Property Damage.
☒ **Required – Cyber Liability:** combined single limit, or the equivalent, of not less than $1,000,000.00 per claim , with an annual aggregate limit of $4,000,000.00

The insurance described in this section shall not be cancelled or materially changed without Contractor providing at least sixty (60) days written notice to the County. This policy(s) shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it. Any obligation that County agree to a waiver of subrogation is hereby stricken.

H. **Debt Limitation.** The Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

I. **Public Contracting Requirements.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:

1. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.

2. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.

3. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.

   Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

4. As applicable, Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.

J. **Governing Law; Venue.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

K. **Termination.** This Contract may be terminated by mutual agreement of the parties or by the County for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor and, upon receipt of the written notice, Contractor shall stop performance, and County shall pay Contractor for the goods or services delivered and accepted; (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; (iii) if Contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.

L. **Compliance.** Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time. This includes, but is not

limited to: (i) Titles VI and VII of Civil Rights Act of 1964; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990; (iv) Executive Order 11246; (v) The Age Discrimination in Employment Act of 1967; (vi) the Health Insurance Portability and Accountability Act of 1996; the Age Discrimination Acts of 1967 and 1975; (vii) The Vietnam Era Veterans' Readjustment Assistance Act of 1974; (viii) ORS Chapter 659; (ix) all other applicable requirements of federal and state civil rights and rehabilitation statues, rules and regulations; (x) all federal and state laws governing the handling, processing, packaging, storage, labeling, and delivery of food products; (xi) all regulations and administrative rules established pursuant to the foregoing laws; and (xii) County Local Contract Review Board Rules, containing language required to be in all public contracts, which is specifically incorporated by reference as if set forth herein.

M. Tax Compliance. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.

N. Indemnification. Subject to the limitations in Section 12 of the Vendor Agreement, Contractor agrees to indemnify and defend the County and the entities identified in section R of this Contract, their officers, elected officials, agents and employees from and against from any damages, costs, liabilities, expenses (including costs of investigation, mitigation, and notification), and fines (including reasonable and actual attorney's fees) ("Damages") in connection with any claims or actions brought by third parties against County arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of Contractor or Contractor's employees or agents. Any obligation of the listed entities to indemnify, hold harmless and defend Contractor, its officers, elected officials, agents and employees, or any other indemnitee, shall only be to the extent provided by Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300) from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based on damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the County or the County's employee or agents.

O. HIPAA Compliance. Subject to the U.S. Health Insurance Portability and Accountability Act (HIPAA) of 1996 and its implementing regulation, the Standard of Privacy of Individuals Identifiable Health Information at 45 C.F.R. Part 160 and 164, Subpart A and E, the County is required to enter into a Business Associate Agreement, attached hereto as Exhibit D, with the Contractor prior to the commencement of any work under this Contract. Contractor acknowledges and agrees that protected health information ("PHI") disclosed by County to Contractor may only be used by or disclosed to Contractor pursuant the Business Associate Agreement or pursuant to a written consent in compliance with 42 C.F.R. Part 2, as may be amended from time to time. Contractor agrees to comply with any and all applicable privacy laws including without limitation, 42 C.F.R. Part 2.

P. Dispute Resolution. No attorney fees shall be paid for or awarded to either party in the course of any dispute, indemnification, or other recovery. It is the intent of the parties that each shall bear the costs of its own legal counsel. Any requirements contained in this Contract waiving a right to a jury trial or requiring binding arbitration are void.

Q. Records. Contractor shall maintain all accounting records relating to this Contract according to GAAP and any other records relating to Contractor's performance ("Records") for six (6) years from termination or as otherwise required. Contractor shall grant County, the federal government, and their duly authorized representatives access to the Records, including reviewing, auditing, copying, and making transcripts. Any documents that are requested to be maintained as confidential by either party shall only be maintained as confidential to the extent permitted by the Oregon Public Records Law ORS 192.

R. Subcontractors. Contractor shall ensure that agreements are in place for its subcontractors, if any, which meet HIPAA requirements.

S. Counterparts. This Addendum may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

T. Fire Districts. Contractor agrees to provide materially the same terms as set forth in this Contract (including but not limited to all price terms, liability provisions, and other material terms and conditions) to the following entities identified below (the "Fire Districts"):

- Canby Fire District
- City of Lake Oswego
- Clackamas Fire District #1
- Colton Fire District
- Gladstone Fire District
- Hoodland Fire District
- Molalla Fire District
- Sandy Fire District
- Tualatin Valley Fire & Rescue

Each Fire District is required to sign a separate agreement with Contractor, and the parties shall make commercially reasonable efforts to assist in execution of such agreements. Provided, however, neither party can guarantee that any Fire District will enter into an agreement for the software.

U. Waiver. The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.

V. Notices. Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.

W. Data Security. Contractor agrees to preserve the confidentiality, integrity and accessibility of County data with administrative, technical and physical measures that conform to generally recognized industry standards, outlined above, and best practices. Maintenance of a secure processing environment includes but is not limited to the timely application of patches, fixes and updates to operating systems and applications as provided by Contractor or open source support.

X. Additional Federal Terms & Conditions.
The County intends that all or a portion of the consideration paid to Contractor will be eligible for reimbursement by one or more federal agencies including, but not limited to, the Federal Emergency Management Agency ("FEMA"). This Contract is subject to the additional terms and conditions required by federal law for a federal award. All terms and conditions required under applicable federal law for a federal reward including, but no limited to, 2 C.F.R. § 200.326 and 2 C.F.R. § Pt. 200, App. II, are hereby incorporated by this reference herein. Further Federal Language is listed in Exhibit C.

By their signatures below, the parties to this Addendum agree to the terms, conditions, and content expressed herein.

ESO Solutions, Inc.   Clackamas County

_____ _____
Authorized Signature   Date   Authorized Signature   Date

_____ _____
Name/Title (Printed)   Name/Title (Printed)

Approved As To Form:

_____
Clackamas County Counsel   Date