

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement ("**Agreement**") dated September 24, 2014 ("**Effective Date**"), is entered into by and between ESO Solutions, Inc ("**Vendor**"), a Texas corporation, and Williamson County EMS ("**Covered Entity**"), for the purpose of setting forth Business Associate Agreement terms between Covered Entity and Vendor. Covered Entity and Vendor each are referred to as a "**Party**" and collectively as the "**Parties**." This Agreement shall commence on the Effective Date set forth above.

WHEREAS, Covered Entity, owns, operates, manages, performs services for, otherwise are affiliated with or are themselves a Covered Entity as defined in the federal regulations at 45 C.F.R. Parts 160 and 164 (the "**Privacy Standards**") promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**") and the Health Information Technology for Economic and Clinical Health Act of 2009 ("**HITECH**");

WHEREAS, pursuant to HIPAA and HITECH, the U.S. Department of Health & Human Services ("**HHS**") promulgated the Privacy Standards and the security standards at 45 C.F.R. Parts 160 and 164 (the "**Security Standards**") requiring certain individuals and entities subject to the Privacy Standards and/or the Security Standards to protect the privacy and security of certain individually identifiable health information ("**Protected Health Information**" or "**PHI**"), including electronic protected health information ("**EPHI**");

WHEREAS, the Parties wish to comply with Privacy Standards and Security Standards as amended by the HHS regulations promulgated on January 25, 2013, entitled the "Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act," as such may be revised or amended by HHS from time to time;

WHEREAS, in connection with Vendor's performance under its agreement(s) or other documented arrangements between Vendor and Covered Entity, whether in effect as of the Effective Date or which become effective at any time during the term of this Agreement (collectively "**Business Arrangements**"), Vendor may provide services for, or on behalf of, Covered Entity that require Vendor to use, disclose, receive, access, create, maintain and/or transmit health information that is protected by state and/or federal law; and

WHEREAS, Vendor and Covered Entity desire that Vendor obtain access to PHI and EPHI in accordance with the terms specified herein;

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement and the Business Arrangements, and other good and valuable consideration, the sufficiency and receipt of which are hereby severally acknowledged, the Parties agree as follows:

### **1. Vendor Obligations.**

In accordance with this Agreement and the Business Arrangements, Vendor may use, disclose, access, create, maintain, transmit, and/or receive on behalf of Covered Entity health information that is protected under applicable state and/or federal law, including without limitation, PHI and EPHI. All capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the regulations promulgated by HHS in accordance with HIPAA and HITECH, including the Privacy Standards and Security Standards (collectively referred to hereinafter as the "**Confidentiality Requirements**"). All reference to PHI herein shall be construed to include EPHI. PHI shall mean only that PHI Vendor uses, discloses, accesses, creates, maintains, transmits and/or receives for or on behalf of Covered Entity pursuant to the Business Arrangements. The Parties hereby acknowledge that the definition of PHI includes "Genetic Information" as set forth at 45 C.F.R. §160.103. To the extent Vendor is to carry out an obligation of Covered Entity under the Confidentiality Requirements, Vendor shall comply with the provision(s) of the Confidentiality Requirements that would apply to Covered Entity (as applicable) in the performance of such obligations(s).

### **2. Use of PHI.**

Except as otherwise required by law, Vendor shall use PHI in compliance with this Agreement and 45 C.F.R. §164.504(e). Vendor agrees not to use PHI in a manner that would violate the Confidentiality Requirements if the PHI were used by Covered Entity in the same manner. Furthermore, Vendor shall use PHI: (i) for the purpose of performing services for, or on behalf of, Covered Entity as such services are defined in the Business Arrangements; and (ii) as necessary for the proper management and administration of Vendor or to carry out its legal responsibilities; provided that such uses are permitted under federal and applicable

state law. All de-identification of PHI must be performed in accordance with the Confidentiality Requirements, specifically 45 C.F.R. §164.514(b).

3. **Disclosure of PHI.**

3.1 Subject to any limitations in this Agreement, Vendor may disclose PHI to any third party as necessary to perform its obligations under the Business Arrangements and as permitted or required by applicable law. Vendor agrees not to disclose PHI in a manner that would violate the Confidentiality Requirements if the PHI was disclosed by the Covered Entity in the same manner. Further Vendor, may disclose PHI for the proper management and administration of Vendor; provided that: (i) such disclosures are required by law; or (ii) Vendor: (a) obtains reasonable assurances from any third party to whom the PHI is disclosed that the PHI will be held confidential and used and disclosed only as required by law or for the purpose for which it was disclosed to third party, and (b) requires the third party to agree to immediately notify Vendor of any instances of which it is aware that PHI is being used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Confidentiality Requirements. Vendor shall report to Covered Entity any use or disclosure of PHI not permitted by this Agreement of which it becomes aware. Such report shall be made within five (5) business days of Vendor becoming aware of such use or disclosure.

3.2 If Vendor uses or contracts with any agent, including a subcontractor (collectively "*Subcontractors*") that uses, discloses, accesses, creates, receives, maintains or transmits PHI on behalf of Vendor, Vendor shall require all Subcontractors to agree in writing to substantially similar restrictions and conditions that apply to Vendor under this Agreement. In addition to Vendor's obligations under Section 9, Vendor agrees to mitigate, to the extent practical and unless otherwise requested by the Covered Entity, any harmful effect that is known to Vendor and is the result of a use or disclosure of PHI by Vendor or any Subcontractor in violation of this Agreement. Additionally, Vendor shall ensure that all disclosures of PHI by Vendor and its Subcontractors comply with the principle of "*minimum necessary use and disclosure*," (i.e., in accordance with 45 C.F.R. §164.502(b), only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed).

4. **Individual Rights Regarding Designated Record Sets.**

If Vendor maintains a Designated Record Set on behalf of Covered Entity, Vendor shall: (i) provide access to and permit inspection and copying of PHI by Covered Entity under conditions and limitations required under 45 C.F.R. §164.524, as it may be amended from time to time; and (ii) amend PHI maintained by Vendor as required by Covered Entity. Vendor shall respond to any request from Covered Entity for access by an Individual within ten (10) business days of such request and shall make any amendment requested by Covered Entity within twenty (20) business days of such request. Any information requested under this Section 4 shall be provided in a form or format requested, if it is readily producible in such form or format. Vendor may charge a reasonable fee based upon Vendor's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies). Vendor shall notify Covered Entity within ten (10) business days of receipt of any request for access or amendment by an Individual.

5. **Accounting of Disclosures.**

Vendor shall make available to Covered Entity within ten (10) business days of a request by Covered Entity the information required for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528 (or such shorter time as may be required by state or federal law). Such accounting must be provided without cost if it is the first accounting requested within any twelve (12) month period. For subsequent accountings within the same twelve (12) month period, Vendor may charge a reasonable fee based upon Vendor's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies) only after Vendor informs Covered Entity and Covered Entity informs the Individual in advance of the fee, and the Individual is afforded an opportunity to withdraw or modify the request. Such accounting obligations shall survive termination or expiration of this Agreement and with respect to any disclosure, whether on or before the termination of this Agreement, shall continue for a minimum of seven (7) years following the date of such disclosure.

6. **Withdrawal of Authorization.**

If the use or disclosure of PHI under this Agreement is based upon an Individual's specific authorization regarding the use of his or her PHI, and: (i) the Individual revokes such authorization in writing; (ii) the effective date of such authorization has expired; or (iii) the authorization is found to be defective in any manner that renders it invalid for whatever reason, then Vendor agrees, if it has received notice from Covered Entity of such revocation or invalidity, to cease the use and disclosure of any such

Individual's PHI except to the extent Vendor has relied on such use or disclosure, or where an exception under the Confidentiality Requirements expressly applies.

**7. Records and Audit.**

Vendor shall make available to HHS or its agents its internal practices, books, and records relating to the compliance of Vendor and Covered Entity with the Confidentiality Requirements, such internal practices, books and records to be provided in the time and manner designated by HHS or its agents. Except to the extent prohibited by law, Vendor agrees to notify Covered Entity immediately upon receipt by Vendor of any and all requests by or on behalf of any and all federal, state, and local government authorities served upon Vendor requesting PHI or investigating compliance with the Confidentiality Requirements.

**8. Implementation of Security Standards; Notice of Security Incidents.**

Vendor will comply with the Security Standards and, by way of example and not limitation, use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement. In accordance with the Security Standards, Vendor will implement administrative, physical, and technical safeguards that protect the confidentiality, integrity and availability of the PHI that it uses, discloses, accesses, creates, receives, maintains or transmits. To the extent feasible, Vendor will use commercially reasonable efforts to ensure that the technology safeguards used by Vendor to secure PHI will render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI. Vendor will promptly report to Covered Entity any Security Incident of which it becomes aware; provided, however, that Covered Entity acknowledges and shall be deemed to have received notice from Vendor that there are routine occurrences of: (i) unsuccessful attempt to penetrate computer networks or services maintained by Vendor; and (ii) immaterial incidents such as "pinging" or "denial of services" attacks. At the request of Covered Entity, Vendor shall identify: the date of the Security Incident, the scope of the Security Incident, Vendor's response to the Security Incident, and to the extent permitted by law, the identification of the party responsible for causing the Security Incident, if known.

**9. Data Breach Notification and Mitigation.**

**9.1 HIPAA Data Breach Notification and Mitigation.** Vendor agrees to implement reasonable systems for the discovery and prompt reporting of any "breach" of "unsecured PHI" as those terms are defined by 45 C.F.R. §164.402 ("HIPAA Breach"). The Parties acknowledge and agree that 45 C.F.R. §§164.404 and 164.410, as describe below in this Section 9.1, govern the determination of the date of a HIPAA Breach. In the event of any conflict between this Section 9.1 and the Confidentiality Requirements, the more stringent requirements shall govern. Following the discovery of a HIPAA Breach, Vendor will notify Covered Entity immediately and in no event later than five (5) business days after Vendor discovers such HIPAA Breach unless Vendor is prevented from doing so by 45 C.F.R. §164.412 concerning law enforcement investigations. For purposes of reporting a HIPAA Breach to Covered Entity, the discovery of a HIPAA Breach shall occur as of the first day on which such HIPAA Breach is known to Vendor or, by exercising reasonable diligence, would have been known to Vendor. Vendor will be considered to have had knowledge of a HIPAA Breach if the HIPAA Breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the HIPAA Breach) who is an employee, officer or other agent of Vendor. No later than ten (10) business days following a HIPAA Breach, Vendor shall provide Covered Entity with sufficient information to permit Covered Entity to comply with the HIPAA Breach notification requirements set forth at 45 C.F.R. §164.400 *et. seq.* This Section 9.1 shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Vendor maintains PHI.

**9.2 Data Breach Notification and Mitigation Under Other Laws.** In addition to the requirements of Section 9.1, Vendor agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including, but not limited to, PHI and referred to hereinafter as "*Individually Identifiable Information*") that, if misused, disclosed, lost or stolen would trigger an obligation under one or more State data breach notification laws (each a "*State Breach*") to notify the individuals who are the subject of the information. Vendor agrees that in the event any Individually Identifiable Information is lost, stolen, used or disclosed in violation of one or more State data breach notification laws, Vendor shall promptly: (i) notify Covered Entity within five (5) business days of such misuse, disclosure, loss or theft; and (ii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach. This Section 9.2 shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Vendor maintains PHI or Individually Identifiable Information.

**10. Obligations of Covered Entity.**

**10.1 Notification Requirement.** Covered Entity shall notify Vendor of:

- a. Any limitation(s) in Covered Entity's notice of privacy practices in accordance with 45 CFR 164.520 to the extent that such changes may affect Vendor's use or disclosure of PHI;
- b. Any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Vendor's use or disclosure of PHI; and
- c. Any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Vendor's use or disclosure of PHI.

10.2 Permissible Requests. Covered Entity agrees that it will not request Vendor to use or disclose PHI in any manner that would not be permissible under the Confidentiality Requirements if done by Covered Entity.

## 11. Terms and Termination.

11.1 Termination. This Agreement shall remain in effect until terminated in accordance with the terms of this Section 11; provided, however, that termination shall not affect the respective obligations or rights of the Parties arising under this Agreement prior to the effective date of termination, all of which shall continue in accordance with their terms.

11.2 Termination with Cause. Either Party may immediately terminate this Agreement if either of the following events have occurred and are continuing to occur:

- a. Vendor or Covered Entity fails to observe or perform any material covenant or obligation contained in this Agreement for ten (10) business days after written notice of such failure has been given; or
- b. Vendor or Covered Entity violates any provision of the Confidentiality Requirement or applicable federal or state privacy law relating to its obligations under this Agreement.

11.3 May Terminate Business Arrangements in Event of for Cause Termination. Termination of this Agreement for either of the two reasons set forth in Section 11.2 above shall be cause for immediate termination of any Business Arrangement pursuant to which Vendor uses, discloses, accesses, receives, creates, or transmits PHI for or on behalf of Covered Entity.

11.4 Termination Upon Conclusion of Business Arrangements. Upon the expiration or termination of all Business Arrangements, either Covered Entity or Vendor may terminate this Agreement by providing written notice to the other Party.

11.5 Return of PHI Upon Termination. Upon termination of this Agreement for any reason, Vendor agrees either to return all PHI or to destroy all PHI received from Covered Entity that is in the possession or control of Vendor or its Subcontractors. In the case of PHI for which it is not feasible to return or destroy, Vendor shall extend the protection of this Agreement to such PHI and limit further uses and disclosure of such PHI. Vendor shall comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment of such PHI. This Section 11.5 shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Vendor maintains PHI.

## 12. No Warranty.

PHI IS PROVIDED SOLELY ON AN "AS IS" BASIS. THE PARTIES DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 13. Ineligible Persons.

Vendor represents and warrants to Covered Entity that Vendor its director, officers, and key employees: (i) are not currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C. § 1320a-7b(f) of any state healthcare program (collectively, the "*Healthcare Programs*"); (ii) have not been convicted of a criminal offense related to the provision of healthcare items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Healthcare Programs; and (iii) are not under investigation or otherwise aware of any circumstances which may result in Vendor being excluded from participation in the Healthcare Programs (collectively, the "*Warranty of Non-exclusion*"). Vendor representations and warranties underlying the Warranty of Non-exclusion shall be ongoing during the term, and Vendor shall immediately notify Covered Entity of any change in the status of the representations and warranties set for in this Section 13. Any breach of this Section 13 shall give Covered Entity the right to terminate this Agreement immediately.

14. Waiver.

No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach.

15. Assignment.

Neither Party may assign (whether by operation of law or otherwise) any of its rights any of its obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, a Party shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor entity, whether by merger, acquisition, change in control, or other transaction involving the sale of all or substantially all of that Party's assets, without prior approval of the other Party.

16. Severability.

Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

17. Governing Law.

This Agreement shall be governed by, and interpreted in accordance with, the law of the state of Texas, excluding its conflicts of laws provisions. Jurisdiction and Venue for any dispute relating to this Agreement shall exclusively rest with the state and federal courts in Austin, Travis County, Texas.

18. Equitable Relief.

The Parties understand and acknowledge that any disclosure or misappropriation of any PHI in violation of this Agreement will cause irreparable harm, the amount of which may be difficult to ascertain, and therefore agree that either Party shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief deemed appropriate. Such right shall be in addition to the remedies otherwise available at law or in equity.

19. Nature of Agreement: Independent Contractor.

Nothing in this Agreement shall be construed to create: (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates; or (ii) a relationship of employer and employee between the Parties. Vendor is an independent contractor and not an agent of Covered Entity. This Agreement does not express or imply any commitment to purchase or sell goods or services.

20. Counterparts: Execution.

This Agreement and any amendments hereto may be executed by the Parties individually or in any combination, in one or more counterparts, each of which shall be an original and all of which shall together constitute one and the same agreement. Execution and delivery of this Agreement and any amendments by the Parties shall be legally valid and effective through: (i) executing and delivering the paper copy of the document, (ii) transmitting the executed paper copy of the documents by facsimile transmission or electronic mail in "portable document format" (".pdf") or other electronically scanned format, or (iii) creating, generating, sending, receiving or storing by electronic means this Agreement and any amendments, the execution of which is accomplished through use of an electronic process and executed or adopted by a Party with the intent to execute this Agreement (i.e. "electronic signature" through a process such as DocuSign®). In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement of this Agreement is sought.

21. Entire Agreement.

This Agreement constitutes the complete agreement between Vendor and Covered Entity relating to the matters specified in this Agreement and supersedes all prior representations or agreements, whether oral or written with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangements or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Business Arrangements are more strict with respect to PHI and comply with the Confidentiality Requirements, or the Parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party to this Agreement; *provided*,

however that upon the enactment of any law, regulation, court decision or relevant government publication and/or interpretive guidance or policy that a Party believes in good faith will adversely impact the use or disclosure of PHI under this Agreement, that Party may amend the Agreement to comply with such law, regulation, court decision or government publication, guidance or policy by delivering a written amendment to the other Party which shall be effective thirty (30) calendar days after receipt. No obligation on either Party to enter into any transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon the Parties, their affiliates and respective successors and assigns.

22. Notice

All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; (iii) overnight delivery service with proof of delivery, or (iv) electronic mail. Notices shall be sent to the addresses below. No Party to this Agreement shall refuse delivery of any notice hereunder.

Vendor:	Covered Entity:
ESO Solutions, Inc. 9020 N. Capital of Texas Highway Bldg. II-300 Austin, Texas 78759  Attention: Chris Dillie, CEO Tel. No: (512) 351-4831 Fax No:	Williamson County EMS 303 MLK Georgetown, Texas 78626  Attention: Kenny Schnell Tel. No: (512) 943-1264 Fax No: (512) 943-1269

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

Vendor (Legal Name):

ESO Solutions, Inc.

Covered Entity (Legal Name):

Williamson County EMS

By:

Name: Chris Dillie

Title: President and CEO

Date: 9/24/14

By:

Name:

Title:

Date: 10-02-2014