



# TOWNSHIP OF ABINGTON

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## *PUBLIC SAFETY COMMITTEE*

*Lori Schreiber, Chair  
Jimmy DiPlacido, Vice-Chair  
Drew Rothman  
Mike Thompson  
Matt Vahey*

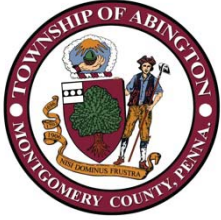
### **A G E N D A** **October 3, 2018** **7:00 P.M.**

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1. CALL TO ORDER
2. CONSIDER APPROVAL OF MINUTES
  - a. Motion to approve the minutes of the September 5, 2018 Public Safety Committee Meeting.
3. PRESENTATION
  - a. Red Light Camera Update – *Chief Pat Molloy*
4. UNFINISHED BUSINESS
5. NEW BUSINESS

*PUBLIC SAFETY COMMITTEE*    *COMMISSIONER LORI SCHREIBER, CHAIR*

- a. **PS-01-101118**    Consider a motion appointing candidates Daniel Burgman and Anthony Agudo from the Civil Service Eligibility List to the position of Probationary Police Officer provided that they successfully complete the Background Investigation, the Medical/Psychological screenings, and all other entry requirements of the Municipal Police Officers' Education and Training Commission for Act 120 Training, effective Monday October 29, 2018.
  - b. **PS-02-101118**    Consider a motion to accept the FY 2017 Staffing for Adequate Fire and Emergency Response (SAFER) Grant in the amount of \$117,500.00.
  - c. **PS-03-101118**    Consider a motion to enter into an agreement with ESO Solutions to provide software support to the Fire Marshal's Office and authorize the Township Manager to execute said agreement.
6. PUBLIC COMMENT
  7. ADJOURNMENT



## PUBLIC SAFETY COMMITTEE

### AGENDA ITEM

September 24, 2018

DATE

Police

DEPARTMENT

PS-01-101118

AGENDA ITEM NUMBER

#### FISCAL IMPACT

Cost > \$10,000.

Yes

No

#### PUBLIC BID REQUIRED

Cost > \$20,100

Yes

No

#### AGENDA ITEM:

Appointment of two new officers.

#### EXECUTIVE SUMMARY:

This appointment will fill the vacancies created by the retirement of Chief John Livingood and the resignation of Officer Robert St. Ledger.

The next three candidates on the Civil Service Eligibility List are:

#1 - Daniel Burgmann

#2 - Anthony Agudo

Candidates Burgmann and Agudo are ACT 120 certified. Burgmann is currently a member of the SEPTA Police Department and Agudo of the Philadelphia Police Department. The Police Administration respectfully requests that the Board of Commissioners appoint candidates Burgmann and Agudo.

#### PREVIOUS BOARD ACTIONS:

#### RECOMMENDED BOARD ACTION:

Consider a motion appointing candidates Daniel Burgman and Anthony Agudo from the Civil Service Eligibility List to the position of Probationary Police Officer provided that they successfully complete the Background Investigation, the Medical/Psychological screenings, and all other entry requirements of the Municipal Police Officers' Education and Training Commission for Act 120 Training, effective Monday October 29, 2018.



**PUBLIC SAFETY COMMITTEE**

**AGENDA ITEM**

September 24, 2018

PS-02-101118

DATE

AGENDA ITEM NUMBER

Fire

DEPARTMENT

FISCAL IMPACT

Cost > \$10,000.

Yes

No

PUBLIC BID REQUIRED

Cost > \$20,100

Yes

No

**AGENDA ITEM:**

Fiscal Year (FY) 2017 Staffing for Adequate Fire and Emergency Response (SAFER) Grant.

**EXECUTIVE SUMMARY:**

Purpose of Grant: To Create Marketing Programs for the Recruitment and Retention of Volunteer Firefighters. In today's age of digital and social media, an effective recruitment campaign must include a social medial component. This is especially true since the A.T.F.D. is trying to recruit the next generation of firefighters and these potential recruits are constantly on social media. We intend to use paid advertising on Facebook and other social media to create a targeted click through firefighter recruitment campaign. These targeted social media ads will broaden our reach well beyond people who currently "like" our Facebook page so that we can reach potential candidates who might have an interest in becoming a volunteer firefighter.

Our FY 2017 SAFER Grant award of \$117,500 does NOT include a matching funds requirement.

**PREVIOUS BOARD ACTIONS:**

None

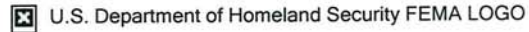
**RECOMMENDED BOARD ACTION:**

Consider a motion to accept the FY 2017 Staffing for Adequate Fire and Emergency Response (SAFER) Grant in the amount of \$117,500.00.

# Award Package

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*U.S. Department of Homeland Security  
Washington, D.C. 20472*



Mr. David Schramm  
Abington Township Fire Department  
1176 Old York Road  
Abington, Pennsylvania 19001-3717

Re: Award No. EMW-2017-FF-00202

Dear Mr. Schramm:

Congratulations, on behalf of the Department of Homeland Security, your application for financial assistance submitted under the Fiscal Year (FY) 2017 Staffing for Adequate Fire and Emergency Response (SAFER) Grant has been approved in the amount of \$117,500.00. As a condition of this award, you are required to contribute a cost match in the amount of \$0.00 of non-Federal funds. The Federal share is \$117,500.00 of the approved total project cost of \$117,500.00.

**Before you request and receive any of the Federal funds awarded to you, you must establish acceptance of the award through the Assistance to Firefighters Grant Programs' e-grant system.** By accepting this award, you acknowledge that the terms of the following documents are incorporated into the terms of your award:

- Summary Award Memo
- Agreement Articles (attached to this Award Letter)
- Obligating Document (attached to this Award Letter)
- FY 2017 Staffing for Adequate Fire and Emergency Response (SAFER) Grant Notice of Funding Opportunity

Please make sure you read, understand, and maintain a copy of these documents in your official file for this award.

**Prior to requesting Federal funds, all recipients are required to register in the System for Award Management (SAM.gov).** As the recipient, you must register and maintain current information in SAM.gov until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that the recipient review and update the information annually after the initial registration, and more frequently for changes in your information. There is no charge to register in SAM.gov. Your registration must be completed on-line at <https://www.sam.gov/portal/public/SAM/>. It is your entity's responsibility to have a valid DUNS number at the time of registration.

In order to establish acceptance of the award and its terms, please follow these instructions:

**Step 1:** Please go to <https://portal.fema.gov> to accept or decline your award. This will take you to the Assistance to Firefighters eGrants system. Enter your User Name and Password as requested on the login screen. Your User Name and Password are the same as those used to complete the application on-line.

Once you are in the system, the Status page will be the first screen you see. On the right side of the Status screen, you will see a column entitled Action. In this column, please select the View Award Package from the drop down menu. Click Go to view your award package and indicate your acceptance or declination of award. PLEASE NOTE: your recruitment period has begun. If you wish to accept your grant, you should do so immediately. When you have finished, we recommend printing your award package for your records.

**Step 2:** If you accept your award, you will see a link on the left side of the screen that says "Update 1199A"

in the Action column. Click this link. This link will take you to the SF-1199A, Direct Deposit Sign-up Form. Please complete the SF-1199A on-line if you have not done so already. When you have finished, you must submit the form electronically. Then, using the Print 1199A Button, print a copy and keep the original form in your grant files. Once approved you will be able to request payments online. If you have any questions or concerns regarding your 1199A, or the process to request your funds, please call (866) 274-0960.

Sincerely,



Thomas George DiNanno  
GPD Assistant Administrator

## Summary Award Memo

**INSTRUMENT:** GRANT  
**AGREEMENT NUMBER:** EMW-2017-FF-00202  
**GRANTEE:** Abington Township Fire Department  
**DUNS NUMBER:** 079499414  
**AMOUNT:** \$117,500.00, Recruitment

### Project Description

The purpose of the Staffing for Adequate Fire and Emergency Response Program is to protect the health and safety of the public and firefighting personnel against fire and fire-related hazards.

After careful consideration, FEMA has determined that the recipient's project or projects submitted as part of the recipient's application, and detailed in the project narrative as well as the request details section of the application - including budget information - was consistent with the Staffing for Adequate Fire and Emergency Response Grant program's purpose and worthy of award. The projects approved for funding are indicated by the budget or negotiation comments below. The recipient shall perform the work described in the grant application for the recipient's approved project or projects as itemized in the request details section of the application and further described in the grant application narrative. The content of the approved portions of the application - along with any documents submitted with the recipient's application - are incorporated by reference into the terms of the recipient's award. The recipient may not change or make any material deviations from the approved scope of work outlined in the above referenced sections of the application without prior written approval, via amendment request, from FEMA.

### Period of Performance

30-NOV-18 to 29-NOV-22

### Amount Awarded

The amount of the award is detailed in the attached Obligating Document for Award. The following are the budgeted estimates for object classes for this grant (including Federal share plus recipient match):

|                  |              |
|------------------|--------------|
| Personnel:       | \$0.00       |
| Fringe Benefits  | \$0.00       |
| Travel           | \$0.00       |
| Equipment        | \$0.00       |
| Supplies         | \$0.00       |
| Contractual      | \$117,500.00 |
| Construction     | \$0.00       |
| Other            | \$0.00       |
| Indirect Charges | \$0.00       |
| Total            | \$117,500.00 |

### NEGOTIATION COMMENTS IF APPLICABLE (max 8000 characters)

The Program Office has made the following reductions to your grant: Funding is not approved for the Marketing Program - Media Marketing (TV/Radio/Internet) line item (for press releases, media interns, etc.) that was requested at \$10,000. Funding is not approved for the Marketing Program - Recruitment Event, requested at \$16,000. Total project cost is reduced from \$143,500 to \$117,500, for a total reduction of \$26,000. Therefore, they have recommended the award at this level: Total budget \$117,500 Federal share \$117,500 Applicant share: Not Applicable If you have any questions about your award package, please contact your GPD Grants Management Specialist: Jacqueline Lee at [Jacqueline.Lee@fema.dhs.gov](mailto:Jacqueline.Lee@fema.dhs.gov).

**FEMA Officials**

**Program Officer:** The Program Specialist is responsible for the technical monitoring of the stages of work and technical performance of the activities described in the approved grant application. If you have any programmatic questions regarding your grant, please call the AFG Help Desk at 866-274-0960 to be directed to a program specialist.

**Grants Assistance Officer:** The Assistance Officer is the Federal official responsible for negotiating, administering, and executing all grant business matters. The Officer conducts the final business review of all grant awards and permits the obligation of federal funds. If you have any questions regarding your grant please call ASK-GMD at 866-927-5646 to be directed to a Grants Management Specialist.

**Grants Operations POC:** The Grants Management Specialist shall be contacted to address all financial and administrative grant business matters for this grant award. If you have any questions regarding your grant please call ASK-GMD at 866-927-5646 to be directed to a specialist.

**ADDITIONAL REQUIREMENTS (IF APPLICABLE) (max 8000 characters)**



## Agreement Articles

 U.S. Department of Homeland Security FEMA LOGO

U.S. Department of Homeland Security  
Washington, D.C. 20472

### AGREEMENT ARTICLES

#### STAFFING FOR ADEQUATE FIRE AND EMERGENCY RESPONSE (SAFER) Grants

**GRANTEE: Abington Township Fire Department**

**PROGRAM: Staffing for Adequate Fire and Emergency Response (SAFER) - Recruitment**

**AGREEMENT NUMBER: EMW-2017-FF-00202**

**AMENDMENT NUMBER:**

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Article I. **Assurances, Administrative Requirements, Cost Principles, and Audit Requirements**

DHS financial assistance recipients must complete either the OMB Standard Form [424B Assurances - Non-Construction Programs](#), or OMB Standard Form [424D Assurances - Construction Programs as applicable](#). Certain assurances in these

documents may not be applicable to your program, and the DHS financial assistance office (DHS FAO) may require applicants to certify additional assurances. Applicants are required to fill out the assurances applicable to their programs as instructed by the awarding agency. Please contact the DHS FAO if you have any questions.

DHS financial assistance recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at [2 C.F.R. Part 200](#), and adopted by DHS at [2 C.F.R. Part 3002](#).

Article II. **DHS Specific  
Acknowledgements  
and Assurances**

All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff.

1. Recipients must cooperate with any compliance reviews or compliance investigations conducted by DHS.

2. Recipients must give DHS access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations *and* other applicable laws or program guidance.

3. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.

4. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

5.If, during the past three years, recipients have been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency (LEP)), sex, age, disability, religion, or familial status, recipients must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the DHS FAO and the [DHS Office of Civil Rights and Civil Liberties](#) (CRCL) by e-mail at [crcl@hq.dhs.gov](mailto:crcl@hq.dhs.gov) or by mail at U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties Building 410, Mail Stop #0190 Washington, D.C. 20528.

6. In the event courts or administrative agencies make a finding of discrimination on grounds of race, color, national origin (including LEP), sex, age, disability, religion, or familial status against the recipient, or recipients settle a case or matter alleging such discrimination, recipients must forward a copy of the complaint and findings to the DHS FAO and the CRCL office by e-mail or mail at the addresses listed above.

The United States has the right to seek judicial enforcement of these obligations.

|   |   |
|---|---|
| Article III. <b>Acceptance of Post Award Changes</b>          | In the event FEMA determines that changes are necessary to the award document after an award has been made, including changes to period of performance or terms and conditions, recipients will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate recipient acceptance of the changes to the award. If you have questions about these procedures, please contact the AFG Help Desk at 1-866-274-0960, or send an email to <a href="mailto:firegrants@dhs.gov">firegrants@dhs.gov</a> . |
| Article IV. <b>Acknowledgment of Federal Funding from DHS</b> | All recipients must acknowledge their use of 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.   |
| Article V. <b>Activities Conducted Abroad</b>                 | All recipients must ensure 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.   |
| Article VI. <b>Age Discrimination Act of 1975</b>             | All recipients must comply with the requirements of the <i>Age Discrimination Act of 1975</i> ( <a href="#">Title 42 U.S. Code, § 6101 et seq.</a> ), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.   |
| Article VII. <b>Americans with Disabilities Act of 1990</b>   | All recipients must comply with the requirements of Titles I, II, and III of the <i>Americans with Disabilities Act</i> , which prohibits   |

recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities. ([42 U.S.C. §§ 12101- 12213](#)).

**Article VIII. Animal Welfare Act of 1966**

Where applicable, recipients of financial assistance will comply with the requirements of the Animal Welfare Act, as amended (7 U.S.C. §2131 et seq.), which requires that minimum standards of care and treatment be provided for vertebrate animals bred for commercial sale, used in research, transported commercially, or exhibited to the public. Recipients must establish appropriate policies and procedures for the humane care and use of animals based on the Guide for the Care and Use of Laboratory Animals and comply with the Public Health Service Policy and Government Principles Regarding the Care and Use of Animals.

**Article IX. Best Practices for Collection and Use of Personally Identifiable Information (PII)**

DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. All recipients who collect PII are required to have a publically-available privacy policy that describes standards on the usage and maintenance of PII they collect. Recipients may also find the DHS Privacy Impact Assessments: [Privacy Guidance](#) and [Privacy template](#) as useful resources respectively.

**Article X. Civil Rights Act of 1964 - Title VI**

All recipients must comply with the requirements of Title VI of the *Civil Rights Act of 1964* ([42 U.S.C. § 2000d et seq.](#)), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at [6 C.F.R. Part 21](#) and [44 C.F.R. Part 7](#).

**Article XI. Civil Rights Act of 1968**

All recipients must comply with [Title VIII of the Civil Rights Act of 1968](#), which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (See [42 U.S.C. § 3601 et seq.](#)), as implemented by the Department of Housing and Urban Development at [24 C.F.R. Part 100](#). The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units-i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)-be designed and constructed with certain accessible features. (See [24 C.F.R. § 100.201](#).)

**Article XII. Contract Provisions for Non-federal Entity Contracts under Federal Awards**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the recipient under the Federal award must contain provisions as required by Appendix II of 2 C.F.R. Part 200, *Contract Provisions for Non-Federal Entity Contracts Under Federal Awards*, including but not limited to the following:

a. Contracts for more than the simplified acquisition threshold set at \$150,000.

All recipients who have contracts exceeding the acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by Civilian Agency Acquisition Council and the Defense Acquisition Regulation Council as authorized by [41 U.S.C. §1908](#), must address administrative, contractual, or legal remedies in instance where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate.

b. Contracts in excess of \$10,000.

All recipients that have contracts exceeding \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

- Article XIII. **Copyright** All recipients must affix the applicable copyright notices of [17 U.S.C. §§ 401 or 402](#) and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.
- Article XIV. **Debarment and Suspension** All recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) [12549](#) and [12689](#), and [2 C.F.R. Part 180](#). These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.
- Article XV. **Disposition of Equipment Acquired Under the Federal Award** When original or replacement equipment acquired under this award by the recipient or its sub-recipients is no longer needed for the original project or program or for other activities currently or previously supported by DHS/FEMA, you must request instructions from DHS/FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. § 200.313.
- Article XVI. **Drug-Free Workplace Regulations** All recipients must comply with the *Drug-Free Workplace Act of 1988* ([41 U.S.C. § 8101 et seq.](#)), which requires all organizations receiving grants from any federal agency agree to maintain a drug-free workplace. You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 CFR part 3001, which adopts the Government-wide implementation (2 CFR part 182) of sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 8101-8107).
- Article XVII. **Duplication of Benefits** Any cost allocable to a particular federal financial assistance award provided for in [2 C.F.R. Part 200, Subpart E](#) may not be charged to other federal financial assistance awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions, or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.
- Article XVIII. **Education Amendments of 1972 (Equal Opportunity in Education Act) - Title IX** All recipients must comply with the requirements of Title IX of the Education Amendments of 1972 ([20 U.S.C. § 1681 et seq.](#)), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at [6 C.F.R. Part 17](#) and [44 C.F.R. Part 19](#).
- Article XIX. **Energy Policy and Conservation Act** All recipients must comply with the requirements of [42 U.S.C. § 6201](#) which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.
- Article XX. **Environmental Planning and Historic Preservation Screening** AFG funded activities that may require an EHP review, involving the installation or requiring renovations to facilities, including but not limited to air compressor/fill station/cascade system (Fixed) for filling SCBA, air improvement systems, alarm systems, antennas, gear dryer, generators (fixed), permanently mounted signs, renovations to facilities, sprinklers, vehicle exhaust systems (fixed) or washer/extractors are subject to FEMA's Environmental Planning and Historic Preservation (EHP) review process. FEMA is required to consider the potential impacts to natural and cultural resources of all projects funded by FEMA grant funds, through its EHP Review process, as mandated by the National Environmental Policy Act; National Historic Preservation Act of 1966, as amended; National Flood Insurance Program regulations; and, any other applicable laws

and Executive Orders. To access the FEMA's Environmental and Historic Preservation (EHP) screening form and instructions go to our Department of Homeland Security/Federal Emergency Management Agency website at: <https://www.fema.gov/library/viewRecord.do?id=6906>. In order to initiate EHP review of your project(s), you must complete all relevant sections of this form and submit it to the Grant Programs Directorate (GPD) along with all other pertinent project information. Failure to provide requisite information could result in delays in the release of grant funds.

- Article XXI. **False Claims Act and Program Fraud Civil Remedies** All recipients must comply with the requirements of [31 U.S.C. § 3729-3733](#) which prohibits the submission of false or fraudulent claims for payment to the federal government. (See [31 U.S.C. § 3801-3812](#) which details the administrative remedies for false claims and statements made.)
- Article XXII. **Federal Debt Status** All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See [OMB Circular A-129](#).)
- Article XXIII. **Federal Leadership on Reducing Text Messaging while Driving** All recipients are 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.
- Article XXIV. **Fly America Act of 1974** All recipients must comply with Preference for U.S. Flag Air Carriers (air carriers holding certificates under [49 U.S.C. § 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* ([49 U.S.C. § 40118](#)) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981 [amendment](#) to Comptroller General Decision B-138942.
- Article XXV. **Hotel and Motel Fire Safety Act of 1990** In accordance with Section 6 of the *Hotel and Motel Fire Safety Act of 1990*, [15 U.S.C. § 2225a](#), all recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of the *Federal Fire Prevention and Control Act of 1974*, as amended, [15 U.S.C. § 2225](#).
- Article XXVI. **Limited English Proficiency (Civil Rights Act of 1964, Title VI)** All recipients must comply with the *Title VI of the Civil Rights Act of 1964* (Title VI) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.
- Article XXVII. **Lobbying Prohibitions** All recipients must comply with [31 U.S.C. § 1352](#), which provides that none of the funds provided under an federal financial assistance award may be expended by the recipient to pay any person to influence, or attempt 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 any federal action concerning the award or renewal.
- Article XXVIII. **National Environmental Policy Act** All recipients 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 recipients to use all practicable means within their 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.

|  |  |
|--|--|
| Article XXIX. <b>Nondiscrimination in Matters Pertaining to Faith- Based Organizations</b> | It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. All recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.   |
| Article XXX. <b>Non-supplanting Requirement</b>  | All recipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.   |
| Article XXXI. <b>Notice of Funding Opportunity Requirements</b>                            | All of the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the award terms and conditions. All recipients must comply with any such requirements set forth in the program NOFO.   |
| Article XXXII. <b>Patents and Intellectual Property Rights</b>                             | Unless otherwise provided by law, recipients are subject to the <a href="#">Bayh-Dole Act, Pub. L. No. 96-517</a> , as amended, and codified in <a href="#">35 U.S.C. § 200</a> et seq. All recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at <a href="#">37 C.F.R. Part 401</a> and the standard patent rights clause located at <a href="#">37 C.F.R. § 401.14</a> .   |
| Article XXXIII. <b>Prior Approval for Modification of Approved Budget</b>                  | Before making any change to the DHS/FEMA approved budget for this award, you must request prior written approval from DHS/FEMA where required by 2 C.F.R. § 200.308. For awards with an approved budget greater than \$150,000, you may not transfer funds among direct cost categories, programs, functions, or activities without prior written approval from DHS/FEMA where the cumulative amount of such transfers exceeds or is expected to exceed ten percent (10%) of the total budget DHS/FEMA last approved. You must report any deviations from your DHS/FEMA approved budget in the first Federal Financial Report (SF-425) you submit following any budget deviation, regardless of whether the budget deviation requires prior written approval.  |
| Article XXXIV. <b>Procurement of Recovered Materials</b>                                   | All recipients must comply with Section 6002 of the <a href="#">Solid Waste Disposal Act</a> , as amended by the <a href="#">Resource Conservation and Recovery Act</a> . The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at <a href="#">40 C.F.R. Part 247</a> that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.   |
| Article XXXV. <b>Protection of Human Subjects</b>  | Where applicable, recipients of financial assistance will comply with the requirements of the Federal regulations at 45 CFR Part 46, which requires that recipients comply with applicable provisions/law for the protection of human subjects for purposes of research. Recipients must also comply with the requirements in DHS Management Directive 026-04, Protection of Human Subjects, prior to implementing any work with human subjects. For purposes of 45 CFR Part 46, research means a systematic investigation, including research, development, testing, and evaluation, designed to develop or contribute to general knowledge. Activities that meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program that is considered research for other purposes. The regulations specify additional protections for research involving human fetuses, pregnant women, and neonates (Subpart B); prisoners (Subpart C); and children (Subpart D). The use of autopsy materials is governed by applicable State and local law and is not directly regulated by 45 CFR Part 46. |
| Article XXXVI. <b>Rehabilitation Act of 1973</b>   | All recipients must comply with the requirements of Section 504 of the <a href="#">Rehabilitation Act of 1973</a> , <a href="#">29 U.S.C. § 794</a> , as amended, which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.  |



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|--|--|
| Article XXXVII. <b>Reporting of Matters Related to Recipient Integrity and Performance</b> | If the total value of the recipient's currently active grants, cooperative agreements, and procurement contracts from all federal assistance offices exceeds \$10,000,000 for any period of time during the period of performance of this federal financial assistance award, you must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at <a href="#">2 C.F.R. Part 200, Appendix XII</a> , the full text of which is incorporated here by reference in the award terms and conditions. |
| Article XXXVIII. <b>Reporting Subawards and Executive Compensation</b>                     | All recipients are required to comply with the requirements set forth in the government-wide Award Term on Reporting Subawards and Executive Compensation located at <a href="#">2 C.F.R. Part 170, Appendix A</a> , the full text of which is incorporated here by reference in the award terms and conditions.   |
| Article XXXIX. <b>SAFECOM</b>  | All recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the <a href="#">SAFECOM</a> Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.   |
| Article XL. <b>Terrorist Financing</b>   | All recipients must comply with <a href="#">E.O. 13224</a> and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible to ensure compliance with the Order and laws.   |
| Article XLI. <b>Trafficking Victims Protection Act of 2000</b>                             | All recipients must comply with the requirements of the government-wide award term which implements Section 106(g) of the <i>Trafficking Victims Protection Act of 2000</i> , (TVPA) as amended by <a href="#">22 U.S.C. § 7104</a> . The award term is located at <a href="#">2 C.F.R. § 175.15</a> , the full text of which is incorporated here by reference in the award terms and conditions.   |
| Article XLII. <b>Universal Identifier and System of Award Management (SAM)</b>             | All recipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at <a href="#">2 C.F.R. Part 25, Appendix A</a> , the full text of which is incorporated here by reference in the terms and conditions.   |
| Article XLIII. <b>USA Patriot Act of 2001</b>  | All recipients must comply with requirements of the <a href="#">Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act)</a> , which amends <a href="#">18 U.S.C. §§ 175-175c</a> .   |
| Article XLIV. <b>Use of DHS Seal, Logo and Flags</b>                                       | All recipients must obtain permission from their DHS FAO, 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.   |
| Article XLV. <b>Whistleblower Protection Act</b>   | All recipients must comply with the statutory requirements for whistleblower protections (if applicable) at <a href="#">10 U.S.C. § 2409</a> , <a href="#">41 U.S.C. 4712</a> , and <a href="#">10 U.S.C. § 2324</a> , <a href="#">41 U.S.C. §§ 4304</a> and <a href="#">4310</a> .  |

**FEDERAL EMERGENCY MANAGEMENT AGENCY  
OBLIGATING DOCUMENT FOR AWARD/AMENDMENT**

|                                       |                             |                               |                                  |                                    |
|---------------------------------------|-----------------------------|-------------------------------|----------------------------------|------------------------------------|
| 1. AGREEMENT NO.<br>EMW-2017-FF-00202 | 2.<br>AMENDMENT<br>NO.<br>0 | 3. RECIPIENT NO.<br>23-600025 | 4. TYPE<br>OF<br>ACTION<br>AWARD | 5. CONTROL<br>NO.<br>WX03041N2018T |
|---------------------------------------|-----------------------------|-------------------------------|----------------------------------|------------------------------------|

|  |   |  |
|--|---|--|
| 6. RECIPIENT NAME<br>AND ADDRESS<br>Abington Township Fire<br>Department<br>1176 Old York Road<br>Abington<br>Pennsylvania, 19001-<br>3717 | 7. ISSUING OFFICE AND<br>ADDRESS<br>Grant Programs Directorate<br>500 C Street, S.W.<br>Washington DC, 20472<br>POC: Sheila Parker Darby 202-786-<br>9521 | 8. PAYMENT OFFICE AND ADDRESS<br>FEMA, Financial Services Branch<br>500 C Street, S.W., Room 723<br>Washington DC, 20472 |
|--|---|--|

|   |                         |  |                             |
|---|-------------------------|--|-----------------------------|
| 9. NAME OF<br>RECIPIENT PROJECT<br>OFFICER<br>David Schramm | PHONE NO.<br>2675361058 | 10. NAME OF PROJECT COORDINATOR<br>Catherine Patterson | PHONE NO.<br>1-866-274-0960 |
|---|-------------------------|--|-----------------------------|

|   |                                    |   |  |              |
|---|------------------------------------|---|--|--------------|
| 11. EFFECTIVE DATE<br>OF THIS ACTION<br>30-NOV-18 | 12. METHOD<br>OF PAYMENT<br>SF-270 | 13. ASSISTANCE<br>ARRANGEMENT<br>Cost Sharing | 14. PERFORMANCE PERIOD<br>From:30-<br>NOV-18 | To:29-NOV-22 |
|   |                                    |   | Budget<br>Period<br>From:13-<br>MAY-18       | To:29-SEP-18 |

15. DESCRIPTION OF ACTION

a. (Indicate funding data for awards or financial changes)

| PROGRAM<br>NAME<br>ACRONYM | CFDA NO. | ACCOUNTING DATA<br>(ACCS CODE)<br>XXXX-XXX-XXXXXX-<br>XXXXX-XXXX-<br>XXXX-X | PRIOR<br>TOTAL<br>AWARD | AMOUNT<br>AWARDED<br>THIS<br>ACTION<br>+ OR (-) | CURRENT<br>TOTAL<br>AWARD | CUMULATIVE<br>NON-<br>FEDERAL<br>COMMITMENT |
|----------------------------|----------|---|-------------------------|---|---------------------------|---|
| SAFER                      | 97.083   | 2018-F7-C211-P4310000-<br>4101-D  | \$0.00                  | \$117,500.00                                    | \$117,500.00              | \$0.00                                      |
| TOTALS                     |          |   | \$0.00                  | \$117,500.00                                    | \$117,500.00              | \$0.00                                      |

b. To describe changes other than funding data or financial changes, attach schedule and check here.  
N/A

16a. FOR NON-DISASTER PROGRAMS: RECIPIENT IS REQUIRED TO SIGN AND RETURN THREE  
(3) COPIES OF THIS DOCUMENT TO FEMA (See Block 7 for address)

SAFER recipients are not required to sign and return copies of this document. However, recipients should print and keep a copy of this document for their records.

16b. FOR DISASTER PROGRAMS: RECIPIENT IS NOT REQUIRED TO SIGN

This assistance is subject to terms and conditions attached to this award notice or by incorporated reference in program legislation cited above.

17. RECIPIENT SIGNATORY OFFICIAL (Name and Title)

N/A

DATE

N/A

18. FEMA SIGNATORY OFFICIAL (Name and Title)

Rosalie Vega

DATE

30-AUG-18



**PUBLIC SAFETY COMMITTEE**

**AGENDA ITEM**

September 24, 2018

*DATE*

Fire

*DEPARTMENT*

PS-03-101118

*AGENDA ITEM NUMBER*

**FISCAL IMPACT**

Cost > \$10,000.

Yes

No

**PUBLIC BID REQUIRED**

Cost > \$20,100

Yes

No

**AGENDA ITEM:**

ESO Solutions Master Subscription and License Agreement

**EXECUTIVE SUMMARY:**

The Fire Marshal's Office has historically utilized Firehouse Software to track, schedule and document all fire inspections conducted as well as monitoring progress on deficiencies. A database of all commercial properties has been established for some time utilizing this software.

At the present time, the current software is 8 versions behind the current programs. The current system is also PC based and will not allow external linkage for mobile data inspections.

In February of this year Firehouse software was approved for purchase as a budgeted item through the Fire Marshal's Office. In March of this year Firehouse software was purchased by ESO Solutions. With the transfer of the companies supplying the software and support, it became necessary to update and enter into a new Subscription and License Agreement.

This Agreement as presented has been reviewed and approved by the Township Solicitor.

**PREVIOUS BOARD ACTIONS:**

**RECOMMENDED BOARD ACTION:**

Consider a motion to enter into agreement with ESO Solutions to provide software support to the Fire Marshal's Office and authorize the Township Manager to execute said agreement.

## MASTER SUBSCRIPTION AND LICENSE AGREEMENT

This Master Subscription and License Agreement (the "Agreement") is entered into as of July 1, 2018 ("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 ("ESO") and Abington Fire Marshals Office ("Customer") having its principal place of business at 1176 Old York Road Abington, PA 19001. 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 with certain technology products and/or services and that Customer will pay to 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 set forth in the pages that follow.

### GENERAL TERMS AND CONDITIONS

1. **DEFINITIONS.** Capitalized terms not otherwise defined in this Agreement shall have the meanings below:
  - 1.1. "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.
  - 1.2. "Addendum" or "Addenda" 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 Sales Order (b) a Statement of Work, or (c) another writing the parties intend to be incorporated by reference into this Agreement.
  - 1.3. "Customer Data" means data in electronic form managed or stored by ESO, which is entered into or transmitted through the Software.
  - 1.4. "Deliverable" means software, report, or other work product created pursuant to a Statement of Work.
  - 1.5. "Documentation" means user guides, operating manuals, and written specifications regarding the Software covered by this Agreement.
  - 1.6. "Feedback" refers to any suggestion or idea for improving or otherwise modifying ESO's products or services.
  - 1.7. "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.
  - 1.8. "Interoperability Software" means software-as-a-service that ESO hosts (directly or indirectly) for Customer to exchange healthcare data with others. Some of ESO's Reporting Services may be made available to Customer via the Interoperability Software. For the avoidance of doubt, Interoperability Software does not include Add-on Software, Licensed Software or SaaS.
  - 1.9. "Licensed Software" means on premise software that ESO provides to Customer for its reproduction and use. For the avoidance of doubt, Licensed Software does not include Add-on Software, Interoperability Software or SaaS.
  - 1.10. "Professional Services" means professional services that a Statement of Work calls on ESO to provide.
  - 1.11. "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.
  - 1.12. "Reporting Services" means collectively the different programs or tools ESO provides for 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.
  - 1.13. "Sales Order" means a signed writing whereby Customer is purchasing a license or access to Software, Professional Services or other products and services from ESO.
  - 1.14. "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.
  - 1.15. "Software" means any computer program, programming or modules specified in each Sales Order or SOW. For the avoidance of doubt, Add-on Software, SaaS; Interoperability Software; and Licensed Software shall collectively be referred to as Software.
  - 1.16. "Statement of Work" or "SOW" refers to an Addendum in which Customer has ordered Professional Services or a Deliverable from ESO.
  - 1.17. "Support Services" means those services described in Exhibit A.
  - 1.18. "User" means any individual who uses the Software on Customer's behalf or through Customer's account or passwords, whether authorized or not.
2. **SALES ORDER.** During the Term of this Agreement, Customer may order Software from ESO by signing a Sales Order. Customer's license to Licensed Software and its subscription to SaaS are set forth below. Each such Sales Order is incorporated herein by reference.
3. **LICENSE/SUBSCRIPTION TO SOFTWARE**
  - 3.1. Grant of License. In the case of Licensed Software, during the Term of this Agreement ESO hereby grants Customer a limited, non-exclusive, non-transferable, non-assignable, revocable license to copy and use the Licensed Software, in

such quantities as are set forth on the applicable Sales Order and as necessary for Customer's internal business purposes; provided that, Customer complies with the Restrictions on Use (Section 3.3) and other limitations and obligations contained in this Agreement. Such internal business purposes do not include reproduction or use by any parent, subsidiary, or affiliate of Customer, or any other third party, and Customer shall not permit any such use.

3.2. Grant of Subscription. In the case of SaaS, during the term of this Agreement Customer may access and use the SaaS, in such quantities as are set forth on the applicable Sales Order; provided that, Customer complies with the Restrictions on Use (Section 3.3) and other limitations contained in this Agreement.

3.3. Restrictions on Use. Except as provided in this Agreement or as otherwise authorized by ESO, Customer has no right to: (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. 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 of this Agreement. Customer recognizes that the Software and its components are protected by copyright and other laws.

3.4. Delivery. In the case of Licensed Software, ESO shall provide the Licensed Software to Customer through a reasonable system of electronic download. In the case of SaaS, ESO shall grant Customer access to SaaS promptly after the Effective Date.

3.5. Third-Party Software. Software may incorporate software and other technology owned and controlled by third parties ("Third-Party Software"). ESO is licensed to sublicense and distribute Third-Party Software. All Third-Party Software falls under the scope of this Agreement. Moreover, ESO neither accepts liability, nor warrants the functionality, reliability or accuracy of Third-Party Software, including but not limited to third-party mapping applications.

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

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

4.2. Service Level Agreement. No credits shall be given in the event Customer's access to SaaS is delayed, impaired or

otherwise disrupted (collectively, an "Outage"). If such Outage, excluding Scheduled Downtime (as defined below), results in the service level uptime falling below 99% for three consecutive months or three months in any rolling twelve-month period (collectively, "Uptime Commitment"), then Customer shall have the option to immediately terminate this Agreement; and ESO will return any prepaid, unearned Fees to Customer or Third Party Payer, as applicable. This is Customer's sole remedy for ESO's breach of the Uptime Commitment.

4.3. Scheduled Downtime. In the event ESO determines that it is necessary to intentionally interrupt the SaaS or that there is a potential for the SaaS to be interrupted for the performance of system maintenance (collectively, "Scheduled Downtime"), ESO will use good-faith efforts to notify Customer of such Scheduled Downtime at least 72 hours in advance and will ensure Scheduled Downtime occurs during non-peak hours (midnight to 6 a.m. Central Time). In no event shall Scheduled Downtime constitute a failure of performance by ESO.

4.4. Support and Updates. During the Term of this Agreement, ESO shall provide to Customer the Support Services, in accordance with Exhibit A. Exhibit A is incorporated herein by reference.

#### 5. FEES

5.1. Fees. In consideration of the rights granted and except in the event there is a Third-Party Payer (as defined below), Customer agrees to pay ESO the fees for the Software and/or Professional Services as set forth in the Sales Order(s) or SOW(s) (collectively, "Fees"). The Fees are non-cancelable and non-refundable. Customer shall pay all invoices within thirty (30) days of receipt. In the event a third-party is paying some or all of the Fees on behalf of Customer ("Third-Party Payer"), the Sales Order will state that payment obligation. The parties agree that Customer may replace the Third-Party Payer by submitting to ESO written notice memorializing the change. However, no such change shall be made until the then-current Term's renewal. Moreover, Customer is responsible for payment in the event the Third-Party Payer does not pay the Fees and Customer continues using the Software. For the avoidance of doubt, any such Addenda will become part of this Agreement.

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

5.3. Taxes and Fees. This Agreement is exclusive of all taxes and credit card processing fees, if applicable. Customer is responsible for and will remit (or will reimburse ESO upon ESO's request) 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.

5.4. Appropriation of Funds. If Customer is a city, county or other government entity, the parties accept and agree that Customer has the right to terminate the Agreement at the end of the Customer's fiscal term for a failure by Customer's governing body to 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. Moreover,

Customer agrees to provide ESO reasonable documentation evidencing such non-appropriation of funds.

- 5.5. Usage. ESO may regularly monitor Customer's use of the Software and charge Customer a higher annual Fee if Customer's usage has increased beyond the tier contracted for in the current Sales Order or otherwise assess additional fees (for example, Customer is uploading more records into the Software than it has previously contracted for) (collectively, "Overages"). ESO may invoice annually for Overages after providing Customer reasonable notice that Customer is incurring Overages. Notwithstanding the foregoing, it is solely Customer's responsibility to report Overages to ESO in a timely manner.

## 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 Sales Order or, if none, for one year. Thereafter, the Term will renew for successive one-year periods, unless either party opts out of such renewal by providing at least sixty days' written notice before the scheduled renewal date. The license period or subscription period shall begin on the date specified in the applicable Sales Order, and this Agreement shall automatically be extended to ensure that the contract Term is coterminous with the subscription period or license period, as applicable.
- 6.2. Termination for Cause. Either party may terminate this Agreement or any individual Sales Order for the other party's material breach by providing written notice. The breaching party shall have thirty days from receipt to cure such breach to the reasonable satisfaction of the non-breaching party.
- 6.3. Bankruptcy/Insolvency. This Agreement and any applicable Sales Order may be terminated immediately upon the following: (a) the institution of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of debts of the other party; (b) the making of an assignment for the benefit of creditors by the other party; or (c) the dissolution of the other party.
- 6.4. Effect of Termination.
- 6.4.1. If this Agreement or any Sales Order is terminated by Customer prior to the expiration of its then-current term, for any reason other than ESO's breach, Customer agrees to immediately remit all unpaid Fees as set forth on the applicable Sales Order equal to the Fees that will become due during the remaining Term.
- 6.4.2. If Customer terminates this Agreement or any Sales Order as a result of ESO's 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 termination date.
- 6.4.3. Upon termination of this Agreement or any Sales Order, 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.

- 6.4.4. Termination of this Agreement is without prejudice to any other right or remedy of the parties and shall not release either party from any liability (a) which at the time of termination, has already accrued to the other party, (b) which may accrue in respect of any act or omission prior to termination, or (c) from any obligation which is intended to survive termination.

- 6.5. Delivery of Data. If Customer requests its data within sixty (60) days of expiration or termination of this Agreement, ESO will provide Customer access to Customer Data in a searchable .pdf format within a reasonable time frame thereafter. ESO is under no obligation to retain Customer Data more than sixty (60) days after expiration or termination of this Agreement.

## 7. REPRESENTATIONS AND WARRANTIES

- 7.1. Material Performance of Software. ESO warrants and represents that the Software will materially perform in accordance with the Documentation provided by ESO, if any.
- 7.2. Warranty of Services. ESO warrants that its personnel are adequately trained and competent to perform Professional Services and/or Support Services and that each will be performed in a professional and workmanlike manner.
- 7.3. 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.
- 7.4. Customer Cooperation. Customer agrees to reasonably and timely cooperate with ESO, including but not limited to providing ESO with reasonable access to its equipment, software, data and using current operating system(s).

8. **DISCLAIMER OF WARRANTIES.** EXCEPT AS OTHERWISE PROVIDED IN SECTION 7, ESO HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, 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: (a) ESO DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE WILL PERFORM WITHOUT INTERRUPTION OR ERROR; AND (b) ESO DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE IS SECURE FROM UNAUTHORIZED INTRUSION OR THAT CUSTOMER DATA WILL REMAIN PRIVATE OR SECURE. CUSTOMER THEREFORE 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 (5) business days; (c) the Software and Documentation, whether or not designated confidential; and

(d) any other nonpublic, sensitive information reasonably considered a trade secret or otherwise confidential. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in the other party's possession at the time of 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 a party's improper action or inaction; (iv) is approved for release in writing by the disclosing party; (v) is required to be disclosed by law; or (vi) PHI, which shall be governed by the Business Associate Agreement rather than this Section.

- 9.2. Nondisclosure. The parties shall not use Confidential Information for any purpose other than to fulfill the terms of this Agreement (the "Purpose"). Each party: (a) shall ensure that its employees or contractors are bound by confidentiality obligations no less restrictive than those contained herein and (b) shall not disclose Confidential Information to any other third party without prior written consent from the disclosing party. Without limiting the generality of the foregoing, the receiving party shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. A receiving party shall promptly notify the disclosing party of any misuse or misappropriation of Confidential Information of which it is aware.
- 9.3. Disclosure of ESO's Security Policies. Customer acknowledges that any information provided by ESO pertaining to ESO's security controls, policies, procedures, audits, or other information concerning ESO's internal security posture are considered Confidential Information and shall be treated by Customer in accordance with the terms and conditions of this Agreement.
- 9.4. Injunction. Customer agrees that breach of this Section would cause ESO irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, ESO will be entitled to injunctive relief against such breach or threatened breach, without ESO proving actual damage or posting a bond or other security.
- 9.5. Termination & Return. With respect to each item of Confidential Information, the obligations of nondisclosure will terminate three (3) 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, in writing, the destruction thereof.
- 9.6. Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto.
- 9.7. Open Records and Other Laws. Notwithstanding anything in this Section to the contrary, the parties expressly acknowledge that Confidential Information may be disclosed if such Confidential Information is required to be disclosed by law, a lawful public records request, or judicial order, provided that prior to such disclosure, written notice of such required disclosure shall be given promptly and without unreasonable delay by the receiving party in order

to give the disclosing party the opportunity to object to the disclosure and/or to seek a protective order. The receiving party shall reasonably cooperate in this effort. In addition, Customer may disclose the contents of this Agreement solely for the purpose of completing its review and approval processes under its local rules, if applicable.

10. **INSURANCE**. Throughout the term of this Agreement, and for a period of at least three (3) years thereafter for any insurance written on a claims-made form, ESO shall maintain in effect the insurance coverage described below:
- 10.1. Commercial general liability insurance with a minimum of \$1 million per occurrence and \$1 million aggregate;
- 10.2. Commercial automobile liability insurance covering use of all non-owned and hired automobiles with a minimum limit of \$1 million for bodily injury and property damage liability;
- 10.3. Worker's compensation insurance and employer's liability insurance or any alternative plan or coverage as permitted or required by applicable law, with a minimum employer's liability limit of \$1 million each accident or disease; and
- 10.4. Computer processor/computer professional liability insurance ("Technology Errors and Omissions") covering the liability for financial loss due to error, omission or negligence of ESO, and Privacy and Network Security insurance ("Cyber") covering losses arising from a disclosure of confidential information, with a combined aggregate amount of \$1 million.

## 11. INDEMNIFICATION

- 11.1. IP Infringement. ESO shall defend and indemnify Customer from any damages, costs, liabilities, expenses (including reasonable and actual 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 an Indemnified Claim under this Section occurs or if ESO determines that an Indemnified Claim is likely to 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 available, either party may, at its option, terminate this Agreement and/or relevant Sales Order. ESO will refund any pre-paid Fees on a pro-rata basis for the allegedly infringing Software provided. 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 or anyone acting on Customer's behalf of the Software in connection with a third-party product or service (the combination of which causes the 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"), the party seeking indemnification (the "Indemnified Party") must give prompt written notice of such Claim to the other party (the "Indemnifying Party"), accompanied by copies of any written documentation regarding the Claim received by the Indemnified Party. The Indemnifying Party shall compromise or defend, at its own expense and with its own counsel, any such Claim. The Indemnified Party 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 the Indemnifying Party will have the right to control such settlement or defense. The Indemnifying Party will not enter into any settlement that imposes any liability or obligation on the Indemnified Party without the Indemnified Party'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 the Indemnifying Party's expense.

## 12. LIMITATION OF LIABILITY

- 12.1. **LIMITATION OF DAMAGES.** UNDER NO CIRCUMSTANCES SHALL ESO OR CUSTOMER BE LIABLE 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.
- 12.2. **LIMITATION OF LIABILITY.** WITH THE EXCEPTION OF SECTION 12.3 (EXCEPTIONS TO THE LIMITATION OF LIABILITY), ESO'S MAXIMUM AGGREGATE LIABILITY FOR ALL CLAIMS OF LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, SHALL NOT EXCEED THE FEES PAID BY CUSTOMER OR ON BEHALF OF CUSTOMER IN THE CASE OF A THIRD-PARTY PAYER UNDER THE APPLICABLE SALES ORDER OR SOW GIVING RISE TO THE CLAIM WITHIN THE PRECEDING 12-MONTH PERIOD.
- 12.3. **EXCEPTIONS TO LIMITATION OF LIABILITY.** NOTWITHSTANDING SECTION 12.2, A PARTY'S LIABILITY SHALL BE LIMITED TO THE AMOUNT OF INSURANCE COVERAGE REQUIRED BY SECTION 10 FOR THE FOLLOWING TYPES OF CLAIMS: (I) CLAIMS ARISING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; AND (II) CLAIMS ARISING FROM A BREACH OF CONFIDENTIAL INFORMATION, INCLUDING A BREACH OF PROTECTED HEALTH INFORMATION.
- 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 & Reports.** As between ESO and Customer, all Customer Data shall be owned by Customer. Without limiting the foregoing, ESO will own all right, title and interest in all Intellectual Property in any aggregated and de-identified reports, summaries, compilations, analysis or other information made available through ESO's Reporting Services. If subscribed to by Customer, ESO grants to Customer a limited, non-exclusive license to use its Reporting Services for Customer's internal purposes only during the Term of this Agreement. No other third party shall rely on ESO's Reporting Services or the contents thereof. ESO disclaims all liability for any damages related thereto. Customer acknowledges and agrees that any such license expires upon the expiration or termination of the applicable Sales Order granting a license to ESO's Reporting Services.
- 13.2. **Use of Customer Data.** Unless it receives Customer's prior written consent, ESO: (a) shall not access, process, or otherwise use Customer Data; and (b) shall not 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 by proper 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.** Notwithstanding any provision herein, ESO may use, reproduce, license, or otherwise exploit Anonymized Data; provided that Anonymized Data does not contain and is not PHI. ("Anonymized Data" refers to Customer Data with the following removed: personally identifiable information and the names and addresses of Customer and any of its Users and/or Customer's clients.)
- 13.4. **Risk of Exposure.** Customer recognizes 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 connections to the Internet. 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 the performance of this Agreement.
- 15.2. Business Associate Addendum. The parties agree to the terms of the Business Associate Addendum attached hereto as Exhibit B and incorporated herein by reference.
- 15.3. Equal Opportunity. The parties shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a), and the posting requirements of 29 CFR Part 471, appendix A to subpart A, if applicable. 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.
- 15.4. 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.
- 15.5. Procurement. Customer agrees that terms and conditions of this Agreement may be utilized by other governmental entities should said governmental entities desire to benefit from Customer's procurement process.

## 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, or (e) delivery by a reputable overnight carrier service. In the case of delivery by facsimile or e-mail, the notice must be followed by a copy of the notice being delivered by a means provided in (a), (b) or (e). The notice will be deemed given on the day the notice is received.
- 17.3. Merger Clause. In entering into this Agreement, neither party is relying upon any representations or statements of the other that are not fully expressed in this Agreement; rather each party is relying on its own judgment and due diligence and expressly disclaims reliance upon any representations or statement not expressly set forth in this Agreement. In the event the Customer issues a purchase order, letter or any other document addressing the Software or Services to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that any such writing is for the Customer's internal purposes only, and that any terms, provisions, and conditions contained therein shall in no way modify this Agreement.
- 17.4. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. If a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 17.5. Assignment & Successors. Neither party may assign, subcontract, delegate or otherwise transfer this Agreement or any of its rights or obligations 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. Except that either party may, without the prior consent of the other, assign all its rights under this Agreement to (i) a purchaser of all or substantially all assets related to this Agreement, or (ii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which either party is participating (collectively, a "Change in Control"); provided however, that the non-assigning party is given notice of the Change in Control.
- 17.6. Modifications and Amendments. This Agreement may not be amended except through a written agreement signed by authorized representatives of each party.
- 17.7. Force Majeure. No delay, failure, or default, other than a failure to pay Fees when due, 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 thirty (30) days, the other party may immediately terminate the applicable Sales Order.
- 17.8. Marketing. Customer hereby grants ESO a license to include Customer's primary logo in any customer list or press release announcing this Agreement; provided ESO first submits each such press release or customer list to Customer and receives written approval, which approval shall not be unreasonably withheld. Goodwill associated with the logo inures solely to Customer, and ESO shall take no action to damage the goodwill associated with the logo or with Customer.
- 17.9. Waiver & Breach. Neither party will be deemed to have waived any of its 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 of this Agreement.
- 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 related Addenda, and any CLAIM, DISPUTE, OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT AND EQUITABLE CLAIMS) BETWEEN CUSTOMER AND ESO, including their affiliates, contractors, and agents, and each of their respective employees, directors, and officers (a "Dispute") will be governed by the laws of the State of Texas, without regard to conflicts of law. Notwithstanding the foregoing, in the event Customer is a U.S. city, county, municipality or other U.S. governmental entity, then any Dispute will be governed by the law of state where Customer is located, without regard to its conflicts of law. The UN Convention for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply. In any Dispute, each party will bear its own attorneys' fees and costs. The parties expressly waive any statutory right to attorneys' fees under § 38.001 of the Texas Civil Practices and Remedies Code or other similar state laws.
- 17.13. Venue. The parties agree that any Dispute shall be brought exclusively in the state or federal courts located in Travis County, Texas. The parties agree to submit to the personal jurisdiction of such courts. Notwithstanding the foregoing, in the event Customer is a U.S. city, county, municipality or other U.S. governmental entity, then any Dispute shall be brought exclusively in the state or federal courts located in the county where Customer is located.
- 17.14. Bench Trial. The parties agree to waive, to the maximum extent permitted by law, any right to a jury trial with respect to any Dispute.
- 17.15. No Class Actions. NEITHER PARTY SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST THE OTHER CUSTOMERS, OR PURSUE ANY CLAIM AS A REPRESENTATIVE OR CLASS ACTION OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.
- 17.16. Limitation Period. NEITHER PARTY, shall be liable for any claim brought more than 2 years after the cause of action for such claim first arose.
- 17.17. 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 thirty (30) days of notice of the Dispute to the other party, the parties may pursue all other courses of action available at law or in equity.
- 17.18. 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).
- 17.19. Order of Precedence. In the event of any conflict between this Agreement, Addenda or other attachments incorporated herein, the following order of precedence will govern: (1) the General Terms and Conditions; (2) any Business Associate Agreement; (3) the applicable Sales Order or SOW, with most recent Sales Order or SOW taking precedence over earlier ones; and (4) any ESO policy posted online, including without limitation its privacy policy. No amendments incorporated into this Agreement after execution of the General Terms and Conditions will amend such General Terms and Conditions unless it specifically states its intent to do so and cites the section or sections amended.
- 17.20. 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.
- 17.21. 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.**

**Customer**

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
[Title]

\_\_\_\_\_  
[Title]

**EXHIBIT A**  
**SUPPORT SERVICES ADDENDUM**

1. **DEFINITIONS.** Capitalized terms not defined below shall have the same meaning as in the General Terms & Conditions.
- 1.1. "Enhancement" means a modification, addition or new release of the Software that when added to the Software, materially changes its utility, efficiency, functional capability or application.
  - 1.2. "E-mail Support" means ability to make requests for technical support assistance by e-mail at any time concerning the use of the then-current release of Software.
  - 1.3. "Error" means an error in the Software, which significantly degrades performance of such Software as compared to ESO's then-published Documentation.
  - 1.4. "Error Correction" means the use of reasonable commercial efforts to correct Errors.
  - 1.5. "Fix" means the repair or replacement of object code for the Software or Documentation to remedy an Error.
  - 1.6. "Initial Response" means the first contact by a Support Representative after the incident has been logged and a ticket generated. This may include an automated email response depending on when the incident is first communicated.
  - 1.7. "Management Escalation" means, if the initial Workaround or Fix does not resolve the Error, notification of management that such Error(s) have been reported and of steps being taken to correct such Error(s).
  - 1.8. "Severity 1 Error" means an Error which renders the Software completely inoperative (e.g. a User cannot access the Software due to unscheduled downtime or an Outage).
  - 1.9. "Severity 2 Error" means an Error in which Software is still operable; however, one or more significant features or functionality are unavailable (e.g. a User cannot access a core component of the Software).
  - 1.1. "Severity 3 Error" means any other error that does not prevent a User from accessing a significant feature of the Software (e.g. User is experiencing latency in reports).
  - 1.2. "Severity 4 Error" means any error related to Documentation or a Customer Enhancement request.
  - 1.3. "Status Update" means if the initial Workaround or Fix cannot resolve the Error, notification of the Customer regarding the progress of the Workaround or Fix.
  - 1.4. "Online Support" means information available through ESO's website ([www.esosolutions.com](http://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 (b) 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](mailto: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 forty-eight 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 responsible for any Error Correction unless ESO can replicate such Error on its own software and hardware or through remote access to Customer's software and hardware.
  - 5.4. Customer is solely responsible for its selection of hardware, and ESO shall not be responsible the performance of such hardware even if ESO makes recommendations regarding the same.
6. **MISCELLANEOUS.** The parties acknowledge that from time-to-time ESO may update its support processes specifically addressed in this Exhibit and may do so by posting such updates to ESO's website or otherwise notifying Customer of such updates. Customer will accept updates to ESO's support procedures and any other terms in this Exhibit; provided however, that they do not materially decrease the level of Support Services that Customer will receive from ESO. THESE TERMS AND CONDITIONS DO NOT CONSTITUTE A PRODUCT WARRANTY. THIS EXHIBIT IS AN ADDITIONAL PART OF THE AGREEMENT AND DOES NOT CHANGE OR SUPERSEDE ANY TERM OF THE AGREEMENT EXCEPT TO THE EXTENT UNAMBIGUOUSLY CONTRARY THERETO.

**EXHIBIT B**  
**HIPAA BUSINESS ASSOCIATE ADDENDUM**

ESO Solutions, Inc. ("Business Associate") and Customer agree that this HIPAA Business Associate Addendum ("Addendum") is entered into for the benefit of Customer, which may be a covered entity ("Covered Entity") under the HIPAA Rules (as defined below) and that this Addendum is effective as of the Effective Date of the Agreement.

Pursuant to Business Associate's performance under the Agreement or other documented arrangements between Business Associate and Covered Entity, whether in effect as of the Effective Date or which become effective at any time during the term of this Addendum, Business Associate may perform functions or activities involving the creation, use, access, transmission or disclosure of PHI on behalf of the Covered Entity, and therefore, Business Associate may function as a business associate. The parties, therefore, agree to the following terms and conditions set forth in this Addendum for the scope of Business Associate's activities involving Covered Entity's PHI, if any.

1. **Scope.** This Addendum applies to and is hereby automatically incorporated into all present and future agreements and relationships, whether written, oral or implied, between Covered Entity and Business Associate, pursuant to which PHI is created, maintained, received or transmitted by Business Associate from or on behalf of Covered Entity in any form or medium whatsoever.
2. **Definitions.** For purposes of this Addendum, the terms used herein, unless otherwise defined, shall have the same meanings as used in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), or the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and any amendments or implementing regulations, (collectively "HIPAA Rules").
3. **Compliance with Applicable Law.** The parties acknowledge and agree that, beginning with the relevant effective date, Business Associate shall comply with its obligations under this Addendum and with all obligations of a business associate under HIPAA, HITECH, the HIPAA Rules, and other applicable laws and regulations, as they exist at the time this Addendum is executed and as they are amended, for so long as this Addendum is in place.
4. **Permissible Use and Disclosure of PHI.** Business Associate may use and disclose PHI as necessary to carry out its duties to a Covered Entity pursuant to the terms of the Agreement and as required by law. Business Associate may also use and disclose PHI (i) for its own proper management and administration, and (ii) to carry out its legal responsibilities. If Business Associate discloses Protected Health Information to a third party for either above reason, prior to making any such disclosure, Business Associate must obtain: (i) reasonable assurances from the receiving party that such PHI will be held confidential and be disclosed only as required by law or for the purposes for which it was disclosed to such receiving party; and (ii) an agreement from such receiving party to immediately notify Business Associate of any known breaches of the confidentiality of the PHI.
5. **Limitations on Use and Disclosure of PHI.** Business Associate shall not, and shall ensure that its directors, officers, employees, subcontractors, and agents do not, use or disclose PHI in any manner that is not permitted by the Agreement or that would violate Subpart E of 45 C.F.R. 164 ("Privacy Rule") if done by a Covered Entity. All uses and disclosures of, and requests by, Business Associate for PHI are subject to the minimum necessary rule of the Privacy Rule.
6. **Required Safeguards to Protect PHI.** Business Associate shall use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 ("Security Rule") with respect to electronic PHI, to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Addendum.
7. **Reporting to Covered Entity.** Business Associate shall report to the affected Covered Entity without unreasonable delay: (a) any use or disclosure of PHI not provided for by the Agreement of which it becomes aware; (b) any breach of unsecured PHI in accordance with 45 C.F.R. Subpart D of 45 C.F.R. 164 ("Breach Notification Rule"); and (c) any security incident of which it becomes aware. With regard to Security Incidents caused by or occurring to Business Associate, Business Associate shall cooperate with the Covered Entity's investigation, analysis, notification and mitigation activities. Notwithstanding the foregoing, Covered Entity acknowledges and shall be deemed to have received advanced notice from Business Associate that there are routine occurrences of: (i) unsuccessful attempts to penetrate computer networks or services maintained by Business Associate; and (ii) immaterial incidents such as "pinging" or "denial of services" attacks.
8. **Mitigation of Harmful Effects.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate in violation of the requirements of the Agreement, including, but not limited to, compliance with any state law or contractual data breach requirements.
9. **Agreements by Third Parties.** Business Associate shall enter into an agreement with any subcontractor of Business Associate that creates, receives, maintains or transmits PHI on behalf of Business Associate. Pursuant to such agreement, the subcontractor shall agree to be bound by the same or greater restrictions, conditions, and requirements that apply to Business Associate under this Addendum with respect to such PHI.
10. **Access to PHI.** Within five (5) business days of a request by a Covered Entity for access to PHI about an individual contained in a Designated Record Set, Business Associate shall make available to the Covered Entity such PHI for so long as such information is maintained by Business Associate in the Designated Record Set, as required by 45 C.F.R. 164.524. In the event any individual delivers directly to Business Associate a request for access to PHI, Business Associate shall within five (5) business days forward such request to the Covered Entity.

11. Amendment of PHI. Within five (5) business days of receipt of a request from a Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), Business Associate shall provide such information to the Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. 164.526. In the event any individual delivers directly to Business Associate a request for amendment to PHI, Business Associate shall within five (5) business days forward such request to the Covered Entity.
12. Documentation of Disclosures. Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528 and HITECH.
13. Accounting of Disclosures. Within five (5) business days of notice by a Covered Entity to Business Associate that it has received a request for an accounting of disclosures of PHI, Business Associate shall make available to a Covered Entity information to permit the Covered Entity to respond to the request for an accounting of disclosures of PHI, as required by 45 C.F.R. 164.528 and HITECH.
14. Other Obligations. To the extent that Business Associate is to carry out one or more of a Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with such requirements that apply to the Covered Entity in the performance of such obligations.
15. Judicial and Administrative Proceedings. In the event Business Associate receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, the affected Covered Entity shall have the right to control Business Associate's response to such request, provided that, such control does not have an adverse impact on Business Associate's compliance with existing laws. Business Associate shall notify the Covered Entity of the request as soon as reasonably practicable, but in any event within seven (7) business days of receipt of such request.
16. Availability of Books and Records. Business Associate hereby agrees to make its internal practices, books, and records available to the Secretary of the Department of Health and Human Services for purposes of determining compliance with the HIPAA Rules.
17. Termination for Cause. In addition to any other rights a party may have in the Agreement, this Addendum or by operation of law or in equity, either party may: i) immediately terminate the Agreement if the other party has violated a material term of this Addendum; or ii) at the non-breaching party's option, permit the breaching party to cure or end any such violation within the time specified by the non-breaching party. The non-breaching party's option to have cured a breach of this Addendum shall not be construed as a waiver of any other rights the non-breaching party has in the Agreement, this Addendum or by operation of law or in equity.
18. Effect of Termination of Agreement. Upon the termination of the Agreement or this Addendum for any reason, Business Associate shall return to a Covered Entity or, at the Covered Entity's direction, destroy all PHI received from the Covered Entity that Business Associate maintains in any form, recorded on any medium, or stored in any storage system. This provision shall apply to PHI that is in the possession of Business Associate, subcontractors, and agents of Business Associate. Business Associate shall retain no copies of the PHI. Business Associate shall remain bound by the provisions of this Addendum, even after termination of the Agreement or Addendum, until such time as all PHI has been returned or otherwise destroyed as provided in this Section. For the avoidance of doubt, de-identified Customer Data shall not be subject to this provision.
19. Injunctive Relief. Business Associate stipulates that its unauthorized use or disclosure of PHI while performing services pursuant to this Addendum would cause irreparable harm to a Covered Entity, and in such event, the Covered Entity shall be entitled to institute proceedings in any court of competent jurisdiction to obtain damages and injunctive relief.
20. Owner of PHI. Under no circumstances shall Business Associate be deemed in any respect to be the owner of any PHI created or received by Business Associate on behalf of a Covered Entity.
21. Data Usage Provision. 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 the HIPAA Rules 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.
22. 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.
23. Safeguards and Appropriate Use of Protected Health Information. Covered Entity is responsible for implementing appropriate privacy and security safeguards to protect its PHI in compliance with HIPAA. Without limitation, it is Covered Entity's obligation to:
  - 23.1. Not include PHI in information Covered Entity submits to technical support personnel through a technical support request or to community support forums. In addition, Business Associate does not act as, or have the obligations of a Business Associate under the HIPAA Rules with respect to Customer Data once it is sent to or from Covered Entity outside ESO's Software over the public Internet; and



- 23.2. Implement privacy and security safeguards in the systems, applications, and software Covered Entity controls, configures and connects to ESO's Software.
- 24. Third Party Rights. The terms of this Addendum do not grant any rights to any parties other than Business Associate and the Covered Entity.
- 25. Change in Law. 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.

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

**ESO Solutions, Inc.**

**Customer**

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
[Title]

\_\_\_\_\_  
[Title]



# SALES ORDER

For: Abington Fire Marshals Office

| Contact and Billing Details                   |                                     |                                    |  |
|---|-------------------------------------|------------------------------------|--|
| <b>Sold to:</b> Lisa Scholly                  | <b>Contact:</b> Lisa Scholly        | <b>Address:</b> 1176 Old York Road |  |
| <b>Bill To:</b> Abington Fire Marshals Office | <b>Phone:</b> (267) 536-1057        | Abington, Pennsylvania             |  |
| <b>Email:</b> lscholly@abington.org           | <b>Email:</b> lscholly@abington.org | 19001                              |  |
|   |                                     | United States                      |  |

| Subscription and License Terms   |                                  |  |  |
|----------------------------------|----------------------------------|--|--|
| <b>Term Start Date:</b> 05/01/18 | <b>Payment Method:</b> Check     | <b>Customer ID:</b> 329279             |  |
| <b>Term End Date:</b> 05/01/19   | <b>Billing Frequency:</b> Annual | <b>Tax Exempt:</b> No                  |  |
| <b>Initial Term (Months):</b> 12 | <b>Billing Method:</b> Email     | <b>Total Recurring Fees:</b> \$ 735.00 |  |
| <b>Renewal Term (Months):</b> 12 | <b>Terms:</b> Net 30             | <b>Total One-Time Fees:</b> \$3,495.00 |  |

| Product Name   | Product Description  | Quantity | Total Price/<br>Discounts |
|--|--|----------|---------------------------|
| FH Enterprise - Fire Incident                              | FireHouse 7 Enterprise Fire Incidents module - Enables NFIRS reporting for fire departments.<br><br>Fee Type: One-Time                                     | 1 /Seat  | \$2,085.00                |
| FH Enterprise - Hydrant                                    | FireHouse 7 Enterprise Hydrant Module enables the collection of complete hydrant data, inspection, and repair records.<br><br>Fee Type: One-Time           | 1 /Seat  | \$2,085.00                |
| FH Enterprise - Occupancy                                  | FireHouse 7 Enterprise Occupancies & Inspections module enables tracking of all building information, enabling robust pre-plans.<br><br>Fee Type: One-Time | 1 /Seat  | \$2,085.00                |
| FH Enterprise Support - Fire Incident                      | Annual support for FH7 Enterprise individual modules.<br><br>Fee Type: Recurring   | 1 /Seat  | \$ 185.00                 |
| FH Enterprise Support - Occupancy                          | Annual support for FH7 Enterprise individual modules<br><br>Fee Type: Recurring  | 1 /Seat  | \$ 185.00                 |
| FH Enterprise Support - Hydrant                            | Annual support for FH7 Enterprise individual modules.<br><br>Fee Type: Recurring   | 1 /Seat  | \$ 185.00                 |
| FH Enterprise - Additional User Support - Fire Incidents   | Annual support for FH7 Enterprise Fire Incidents additional users.<br><br>Fee Type: Recurring  | 1 /Seat  | \$ 60.00                  |
| FH Enterprise - Additional User Support - Occupancy Module | Annual support for FH7 Enterprise Occupancy Module - additional users.<br><br>Fee Type: Recurring  | 1 /Seat  | \$ 60.00                  |
| FH Enterprise - Additional User Support - Hydrant Module   | Annual support for FH7 Enterprise Hydrant Module - additional users.<br><br>Fee Type: Recurring  | 1 /Seat  | \$ 60.00                  |
| <i>Discount - One-Time:Discount</i>                        |  |          | -\$3,645.00               |
| FH Enterprise - Additional User                            | FireHouse 7 Enterprise Additional User license.<br><br>Fee Type: One-Time  | 1 /Seat  | \$ 885.00                 |

**List Price:** \$7,875.00  
**Discounts:** -\$3,645.00  
**Tax:** \$0.00  
**Total:** \$4,230.00

**Pricing, Modifications & Taxes:**

1. The Total Price is based on the Quantity and will be re-evaluated as described in the Master Subscription and License Agreement or similar Customer agreement ("MSLA"). ESO's pricing for Quantity is discussed further within the MSLA.
2. Customer may be subject to a consumer price index adjustment annually ("Uplift") as further described in the MSLA.
3. Customer expressly accepts that it may not reduce, cancel or otherwise modify this Sales Order except as provided by the MSLA prior

THANK YOU FOR CONSIDERING ESO SOLUTIONS


**SALES ORDER**  
For: Abington Fire Marshals Office

to renewal. The products on this Sales Order may only be replaced by the parties signing a subsequent Sales Order modifying, replacing, or otherwise removing a product.

4. ESO's fees are exclusive of all taxes, levies or duties imposed by taxing authorities unless otherwise noted. If Customer is tax-exempt, Customer must provide a valid tax exemption certificate to ESO.
5. Additional fees may be applied by your billing or CAD vendor for certain products and should be discussed with that vendor.

By executing this Sales Order, Customer acknowledges having read and accepted the entire MSLA. Once this Sales Order is executed by Customer, the MSLA and this Sales Order (collectively, the "Agreement") govern your use of ESO's products. Any capitalized terms in this Sales Order that are not defined herein have the meaning defined in the MSLA. The Agreement is the entire agreement between the parties regarding this subject matter and supersedes any and all prior discussions and agreements (including, without limitation, any purchase order or unilateral document). In the event of any conflict between this Sales Order and the MSLA, this Sales Order will prevail.

Abington Fire Marshals Office



[Signature]

JOHN J. ROHRER

[Print Name]

FIRE MARSHAL

[Title]

04-20-18

[Date]