

TRAUMA DATA SERVICES AGREEMENT

This Trauma Data Services Agreement (this “Agreement”) is entered into as of the date indicated on the duly executed Quote which adopts this Agreement (“Effective Date”) between the covered entity indicated below (“Covered Entity”) and ESO Solutions, Inc. (“ESO”) in consideration of the mutual promises and other consideration provided herein, the receipt and sufficiency of which is hereby acknowledged. Covered Entity may designate controlled affiliates that may benefit from the ESO Vendor Aggregator Services and this Agreement from time to time by providing written notice to ESO.

Covered Entity	Customer as indicated on Quote or other ordering document
ESO Vendor Aggregator™ Services	A web-based data submission platform that (i) enables conversion of trauma record database files between ITDX format (received from Covered Entity’s trauma registry software) and formats required by ACS for NTDB/TQIP, and (ii) provides related data validation and visualization tools. The Service includes associated technical support.
Term	Annual, with automatic renewal unless terminated by either party at any time for any reason with 60 days’ prior written notice.

1. ESO Services. ESO grants the Covered Entity (and any designated Controlled Affiliates) the right to access and use the ESO Vendor Aggregator Services for the sole purpose of editing, converting and formatting Covered Entity's data so that Covered Entity may make Covered Entity's data compliance filings to the American College of Surgeons, in all cases subject to Customer's compliance with the terms, conditions, and limitations contained herein.
2. Data access and use generally. During the Term, Covered Entity agrees to disclose to ESO and for ESO to use and (as directed by Covered Entity) disclose identifiable health information, protected health information and electronic protected health information (as such terms are defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act ("HITECH") and the regulations issued under such laws (collectively, "PHI")) only as permitted herein. These uses and disclosures are for purposes of ESO providing services to Covered Entity to improve the quality of reporting and aggregated reporting, and may include conducting data analyses, quality assessment, and assisting with accreditation or verification that relate to Covered Entity's health care operations. Covered Entity shall only provide, and ESO shall only request and accept information that excludes certain PHI in the form of a limited data set as described 45 CFR 164.514(e)(2) ("Limited Data Set"), or de-identified data that contains no PHI where such de-identification conforms to the requirements of HIPAA ("De-Identified Information").
3. Definitions. Terms used but not otherwise defined in this Agreement will have the meaning ascribed to them under HIPAA. To the extent ESO receives, processes or uses PHI, the parties agree that ESO is a Business Associate in respect of such PHI and Covered Entity is a Covered Entity in relation to such PHI under HIPAA.
4. Covered Entity Obligations. In order to have access to the ESO Services, Covered Entity must use a compatible trauma registry software product with ITDX file export capability. Covered Entity agrees to disclose to ESO and for ESO to use and disclose PHI only as permitted herein. These uses and disclosures are for purposes of ESO providing access to the Vendor Aggregator Services to Covered Entity to improve the quality of reporting and aggregated reporting, and may include conducting data analyses, quality assessment, and assisting with accreditation or verification that relate to Covered Entity's health care operations.
5. Permitted uses and disclosures. Except as otherwise specified in this Agreement, ESO may use or disclose PHI on behalf of (or in order to provide services to) Covered Entity to the extent such use or disclosure is necessary to facilitate Covered Entity's use of the Vendor Aggregator Services, provided that such use or disclosure of PHI does not violate HIPAA if done by Covered Entity. Without limiting the generality of the foregoing, Covered Entity further agrees that ESO may use and disclose the data received from or on behalf of Covered Entity for the following purposes, subject to applicable law:
 - 5.1. To use and disclose PHI to provide data aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B);
 - 5.2. Provided that ESO is capable and agrees, and Covered Entity expressly requests and authorizes, ESO may submit Covered Entity data to (a) American College of Surgeons (ACS) databases (currently NTDB and TQIP); and (b) other compliance databases, such as state or regional compliance databases; and

- 5.3. To use Limited Data Sets or De-Identified Information to establish a risk adjusted benchmarking database that meets the requirements of ACS CD 15-5 or other such risk adjusted benchmarking database standards, policies or revisions established by ACS;
- 5.4. To aggregate data for analysis and publication regarding clinical patterns of diagnosis, treatment and outcomes of patients to provide services to the Covered Entity;
- 5.5. To create De-Identified Information in conformity with HIPAA for ESO's use in research, benchmarking and analysis (provided that ESO will not sell data to third parties for commercial use);
- 5.6. To create Limited Data Sets from PHI and use and disclose such Limited Data Sets to third parties for research, public health, or health care operations purposes to the extent permitted by HIPAA and subject to Section 5; and
- 5.7. To use data for internal research purposes to develop risk-adjusted and other analytic models (that contain no PHI) to help advance science and best practices for trauma services and trauma registries.

ESO will own all right, title and interest in all intellectual property developed by or on behalf of ESO of any aggregated and De-Identified Information obtained pursuant to Section 5.3, including any reports, summaries, compilations, analysis, statistics or other information derived therefrom.

6. Business Associate Agreement. Unless ESO and Covered Entity enter into a separate Business Associate Agreement specifically intended to apply to this Agreement, the Business Associate Addendum hereto shall apply to all PHI in the possession of, or that is processed by, ESO.
7. Restrictions on use and disclosure of Limited Data Sets.
 - 7.1. In accordance with 45 CFR 164.514(e)(4)(ii)(C), ESO agrees (i) not to use or further disclose the information in the Limited Data Set other than as permitted by this Agreement or as otherwise required by law; (ii) use appropriate safeguards to prevent use or disclosure of the Limited Data Set other than as provided for by this Agreement; (iii) report to the Covered Entity any use or disclosure of the Limited Data Set not provided for herein of which ESO becomes aware; (iv) ensure that any agents to whom it provides the Limited Data Set agree to the same restrictions and conditions that apply to ESO with respect to such information; and (v) not identify or contact the individuals represented in the Limited Data Set.
 - 7.2. If a Limited Data Set is used for research purposes ESO will disclose the Limited Data Set only to participants covered under this Agreement and other researchers for research in the area of health care in accordance with the provisions of 45 CFR 164.512(i).
 - 7.3. ESO will not use or further disclose a Limited Data Set in a manner that would violate HIPAA if done by Covered Entity.
 - 7.4. ESO will not use or disclose the Limited Data Set other than as permitted by this Agreement or as otherwise required by law.

- 7.5. ESO will use reasonable and appropriate safeguards to prevent use or disclosure of the Limited Data Set other than as provided for by this Agreement, including administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic Limited Data Set that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by 45 CFR 164.314.
8. Obligations of Covered Entity. Covered Entity represents, warrants and covenants that:
- 8.1. It makes available to all patients a Notice of Privacy Practices that complies with 45 CFR 164.520 and any other applicable provisions of HIPAA. Covered Entity will provide ESO with a copy of its Notice of Privacy Practices upon request.
- 8.2. It shall notify ESO of any limitation(s) in Covered Entity's Notice of Privacy Practices, to the extent that such limitation may affect ESO's use or disclosure of PHI or rights to create Limited Data Sets or exercise its rights in Section 3.
- 8.3. To Covered Entity's knowledge, as of the Effective Date, all disclosures of PHI made to ESO are permissible disclosures under HIPAA, and no individual has restricted disclosures so as to make the disclosure to ESO impermissible.
- 8.4. Covered Entity will promptly notify ESO of any restriction on the use or disclosure of PHI that Covered Entity has agreed to in accordance with HIPAA, if such restriction affects ESO's use or disclosure of PHI or exercise its rights in Section 3.
- 8.5. Covered Entity will not ask ESO to use or disclose PHI in any manner that would not be permissible under HIPAA if undertaken by Covered Entity.
9. Insurance. ESO agrees to maintain commercial general liability, errors and omission and cyber-liability/data breach insurance in amounts determined by ESO, but in no event less than \$1,000,000 per claim/\$2,000,000 aggregate.
10. Limitation of liability and remedy. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, INCLUDING CLAIMS FOR DAMAGES FOR LOST PROFITS, GOODWILL, INTERRUPTED OR IMPAIRED USE OF ESO SERVICES OR RELATED SERVICES, AVAILABILITY OF DATA, STOPPAGE OF WORK OR IMPAIRMENT OF OTHER ASSETS RELATING TO THIS AGREEMENT. ESO'S MAXIMUM AGGREGATE LIABILITY FOR ALL CLAIMS OF LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY BUSINESS ASSOCIATE AGREEMENT RELATING TO ESO SERVICES SHALL NOT EXCEED THE GREATER OF \$10,000 OR TWO TIMES THE FEES PAID BY (OR ON BEHALF OF) COVERED ENTITY WITHIN THE PRECEDING 12-MONTH PERIOD UNDER THE APPLICABLE AGREEMENT OR ORDER GIVING RISE TO THE CLAIM (AND REGARDLESS OF ANY CONTRARY OR CONFLICTING PROVISION CONTAINED IN ANY OTHER AGREEMENT RELATING TO ESO'S SERVICES). THE PARTIES AGREE THAT THE LIMITATIONS SET FORTH HEREIN ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR ESO'S SERVICES TO COVERED ENTITY, 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.

11. Term and Termination. This Agreement shall become effective on the Effective Date and shall remain in effect until terminated in accordance with the terms of this Agreement.

11.1. *Termination.* This Agreement may be terminated by written agreement of either party upon 60 days written notice.

11.2. *Effect of Termination.* Except as provided below, upon termination of this Agreement for any reason, ESO will, at Covered Entity's direction, return or destroy all PHI received from Covered Entity, or created or received by ESO on behalf of Covered Entity, and ESO will retain no copies of the PHI; provided however that all De-Identified Information and Limited Data Set data shall not be returned, but rather, subject to compliance with applicable law (including HIPAA) and data contained in a Limited Data Set (and/or De-Identified Information) shall not be subject to the obligations of this section provided that the data use provisions pertaining to such Limited Data Set that are set forth herein will survive any termination or expiration of the Agreement. In the event that ESO reasonably determines that returning or destroying the PHI is infeasible due to inclusion of the PHI in ESO's database or otherwise as permitted under HIPAA, ESO will give Covered Entity a statement of reasons why the return or destruction of the PHI is infeasible and the protections of this Agreement shall continue to apply to such PHI and limit further its use and disclosure to those purposes that make the return or destruction infeasible, for so long as ESO maintains such PHI. The obligations of this section will survive any termination or expiration of this Agreement. Upon termination of this Agreement, the parties agree that Covered Entity will refrain from knowingly submitting PHI to ESO, and ESO will refrain from knowingly accepting PHI from Covered Entity. In the event (i) ESO terminates this Agreement for reasons other than Covered Entity's material breach hereof or (ii) Covered Entity terminates this Agreement for ESO's material breach hereof, then ESO will refund a pro-rated portion of any Fees paid based on the effective termination date.

12. Miscellaneous.

12.1. *Amendment.* Any amendment to this Agreement must be in writing and signed by each of the parties. The parties agree to amend this Agreement from time to time as necessary for the parties to comply with the requirements of applicable laws and regulations. Either party may request that the other party amend this Agreement in order to comply with applicable state and federal law and regulations. In the event the parties engage in negotiations undertaken in accordance with this Section, the parties may suspend during such period of negotiation any provision of this Agreement requiring or obligating either party to use or disclose PHI in a manner that either party reasonably believes would violate any applicable state or federal law or regulation, including without limitation HIPAA.

12.2. *Interpretation.* Any ambiguity in this Agreement will be resolved in favor of a meaning that permits Covered Entity and ESO to comply with HIPAA, HITECH, and applicable state and federal laws and regulations.

12.3. *Assignment.* Except as otherwise provided herein, neither party may without the written consent of the other assign, delegate or otherwise transfer this Agreement or any of its rights or obligations under this Agreement.

- 12.4. *Severability.* If any part of this Agreement is determined to be invalid, illegal or unenforceable by any Act of Congress, state legislature, or by any regulation issued by the United States or a State, or declared null and void by any court with valid jurisdiction, then the parties will modify such part, if possible, to conform to the law, and the remaining parts will be fully effective and operative insofar as reasonably possible.
- 12.5. *Entire Agreement.* This Agreement constitutes the entire understanding and agreement between the parties concerning the subject matter of this Agreement, and supersedes all prior negotiations, agreements and understandings between the parties, whether oral or in writing, concerning its subject matter.
- 12.6. *Choice of Law.* This Agreement is governed by the laws of the State of Texas.
- 12.7. *Third Party Beneficiaries.* ESO and Covered Entity agree that Individuals whose PHI is used or disclosed to ESO or its Subcontractors under this Agreement are not third-party beneficiaries of this agreement.
- 12.8. *Waiver.* No provision of this Agreement may be waived except by an agreement in writing signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision.
- 12.9. *Relationship of the Parties.* The parties are independent contractors of each other. Nothing in this Agreement shall be construed to create an employer/employee, joint venture, or other similar relationship between the parties. Neither party shall have the right to exercise control or direction over the business of the other party.
- 12.10. *Authority.* The undersigned represent and warrant that they are authorized to enter into this Agreement on behalf of the party he or she represents, and that this Agreement will be binding on such party, and its officers, directors, agents, and employees.
- 12.11. *Notices.* Any notices to ESO or Covered Entity required pursuant to this Agreement shall be in writing and sent by US Mail, personal delivery, next-day express mail, or by facsimile addressed as identified below:

To ESO:
11500 Alterra Parkway, Suite 100, Austin, Texas 78758
(Attn: Contracts Department)

To Covered Entity: to the address stated on Quote or other ordering document

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HIPAA BUSINESS ASSOCIATE ADDENDUM

Covered Entity and ESO Solutions, Inc. ("Business Associate") agree that this HIPAA Business Associate Addendum is entered into for the benefit of Covered Entity, which is a covered entity under the Privacy Standards ("Covered Entity").

Pursuant to the Trauma Data Services Agreement (the "Agreement") into which this HIPAA Business Associate Addendum (this "Addendum") has been incorporated, Business Associate may perform functions or activities involving the use and/or disclosure of PHI on behalf of the Covered Entity, and therefore, Business Associate may function as a business associate. Business Associate, therefore, agrees to the following terms and conditions.

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 (i) as permitted under, and (ii) 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, and except for Security Incidents caused by Covered Entity, shall be responsible for reasonable costs incurred by the Covered Entity for those 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 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 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 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 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 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. Breach of Contract by Business Associate. 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 Covered Entity 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. 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: (i) 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 Covered Entity Data once it is sent to or from Covered Entity outside Business Associate's Software over the public Internet; and (ii) implement privacy and security

safeguards in the systems, applications, and software Covered Entity controls, configures and connects to Business Associate's Software.

22. Third Party Rights. The terms of this Addendum do not grant any rights to any parties other than Business Associate and the Covered Entity.

23. Signatures. The signatures to the Agreement (or the document evidencing the parties' adoption thereof) indicate agreement hereto and shall be deemed signatures hereof, whether manual, electronic or facsimile.

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