



## SOFTWARE SUPPORT AGREEMENT

This Software Support Agreement ("Agreement") is made and entered into this 17th day of September, 2019, by and between Northwoods Consulting Partners, Inc., an Ohio corporation with its principal offices at 5815 Wall Street, Dublin, Ohio 43017, USA, (the Licensor, hereinafter "Northwoods"), and the company, person or entity executing this Agreement as the "Licensee" in the space provided below (hereinafter "Licensee"):

Licensee's Name: \_\_\_\_\_

Licensee's Address: \_\_\_\_\_

**RECITALS:**

WHEREAS, Licensee has licensed the specified software from Northwoods pursuant to the terms of an End User License Agreement (as the same may be amended or modified from time to time, hereinafter referred to as the "EULA"); and  
 WHEREAS, Licensee desires to obtain, and Northwoods is willing to provide, technical support services for the specified software and the delivery of generally released upgrades and enhancements with respect to such software from Northwoods; and  
 WHEREAS, Licensee has been advised of the various support offerings provided by Northwoods and has elected to purchase:

Silver Level of Support	_____X_____	
Gold Level of Support	_____	<b>Please initial in the space</b>
Platinum Level of Support	_____	<b>next to the support</b>
Additional Environment support	_____	<b>offering(s) you have chosen</b>

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and intending to be legally bound, the parties hereto agree as follows:

1. **DEFINED TERMS.** The following terms shall have the meanings set forth below for all purposes of this Agreement:
  - a. **"Additional Environment"** means any environment, in excess of the Covered Environments (defined below), for which Licensee elects to pay for additional support.
  - b. **"Consumable Items"** includes all materials that can be used up and must be replenished. Examples of Consumable Items include, but are not limited to: printer, toner, scanner lamps, rollers, glass, cleaning sheets, data tapes, CDs, DVDs, etc.
  - c. **"Covered Environments"** means one (1) production environment, plus one (1) test environment.
  - d. **"Covered Hardware"** is defined as hardware (1) purchased through Northwoods, as detailed on Northwoods' invoices that Licensee has properly paid, and (2) installed and configured by Northwoods.
  - e. **"Covered Software"** means (1) the current released version of the Commercial Off-The-Shelf ("COTS") Compass® software licensed by Licensee from Northwoods under the EULA, as detailed on Northwoods' invoices that the Licensee has properly paid; (2) at any time after Northwoods has delivered to Licensee a new version of such computer software as a Patch, Upgrade and/or Fix under this Agreement, the released version of such computer software last released prior to the current released version; and (3) the current released version of the COTS Document Management Software ("Covered DMS Software") of which Northwoods is a Reseller that is (a) licensed by Licensee through Northwoods, as detailed on Northwoods' invoices that the Licensee has properly paid and (b) installed and/or configured by Northwoods.
  - f. **"Covered Database"** or **"Covered Database Software"** means the database software or the index data and/or image data stored in the database that is (1) purchased through Northwoods as detailed on Northwoods' invoices that Licensee has properly paid, and (2) installed and configured by Northwoods.
  - g. **"Covered Operating System"** (sometimes abbreviated "OS") is the software program that, after being initially loaded into the computer by a boot program, manages all the other programs in a computer and that is (1) purchased through Northwoods, as detailed on Northwoods' invoices that Licensee has properly paid, and (2) installed and configured by Northwoods.
  - h. **"Covered Third Party Applications"** means any third party software that is (1) licensed by Licensee through Northwoods, as detailed on Northwoods' invoices that the Licensee has properly paid and (2) installed and configured by Northwoods.
  - i. **"Documentation"** means electronic on-line material, including user manuals, provided by Northwoods for the Covered Software and that relate to the functional, operational or performance characteristics of the Covered Software.
  - j. **"Error"** or **"Problem"** when used in the context of the Covered Software operation shall mean a demonstrable instance of adverse and incorrect operation of the Covered Software that impacts Licensee's ability to utilize a function of the Covered Software: (1) as provided for in the current Documentation published by Northwoods; or (2) that was available prior to the report of the Error or Problem.
  - k. **"EULA"** is defined in the Recitals to this Agreement.
  - l. **"Onsite Services"** are Support Services provided by Northwoods on behalf of Licensee at a Licensee-designated physical location other than the Northwoods offices or location.
  - m. **"Patch(es), Upgrade(s) and Fix(es)"** means any and all new versions, improvements, modifications, upgrades, updates, fixes and additions to the Covered Software that Northwoods commercially releases to its end users generally during the term of this Agreement to correct deficiencies or enhance the capabilities of the Covered Software, together with updates of the Documentation to reflect such new versions, improvements, modifications, upgrades, fixes or additions; provided, however, that the foregoing shall not include new, separate product offerings, new modules, re-platformed software, new

business process consulting, workflow changes or new functionality.

- n. **"Support Services"** means all professional services provided under this Agreement by Northwoods, subject to the Support Level actually purchased by Licensee, as noted in the Recitals to this Agreement.

2. **SUPPORT SERVICES.**

- a. **Silver Level.**

1) **Remote Support of the Covered Software.** Northwoods shall: (1) use its commercially reasonable efforts to remotely correct any properly reported Error(s) in the Covered Software that are confirmed by Northwoods, in the exercise of its commercially reasonable judgment; (2) use its commercially reasonable efforts to remotely correct any properly reported Error(s) (non-conformity to functional specifications mutually agreed upon by Northwoods and Licensee) in any configurations of the Covered Software that are created by Northwoods or any integrations of the Covered Software with other applications, software or hardware that are configured or created by Northwoods, which are confirmed by Northwoods, in the exercise of its commercially reasonable judgment; and (3) upon the request of Licensee, provide remote technical support and assistance and advice related to the operation and use of the Covered Software by Licensee in the Covered Environments, plus any Additional Environment(s), or any problems with any of the foregoing. Northwoods shall undertake to confirm any reported defect(s) described in this clause promptly after receipt of proper notice from Licensee in accordance with Northwoods' current defect reporting procedures. Northwoods shall perform services in an effort to correct confirmed Errors in the Covered Software, or in configurations or integrations created by Northwoods, promptly after making such confirmation.

2) **Support Center Access.** Support Services generally will be available during the hours of 8:00 a.m. to 8:00 p.m., Eastern Time, Monday through Friday, excluding Northwoods' holidays, or as otherwise provided by Northwoods to its end users purchasing continuing Support Services in the normal course of its business, either by telephone or through a remote control connection to the end-user client or server computer. Licensee acknowledges and agrees that Northwoods requires on-line access to the Covered Software installed on Licensee's systems in order for Northwoods to provide remote Support Services hereunder. Accordingly, Licensee shall install and maintain, at Licensee's sole cost and expense, properly functioning and appropriate industry standard communications software approved by Northwoods; and Licensee shall establish and maintain, at Licensee's sole cost and expense, an adequate secure or dedicated connection with Northwoods to facilitate Northwoods' remote Support Services.

3) **Patches, Upgrades and Fixes.** Northwoods has regular software releases and makes all releases available to its customers. Upon request, on an annual basis, Northwoods will provide to Licensee, at least one (1) Patch, Upgrade and/or Fix to the Covered Software released by Northwoods and will use its best efforts to remotely install such Patch, Upgrade, and/or Fix. To the extent the Patch, Upgrade, and/or Fix cannot be installed by Northwoods remotely, Licensee may request the necessary Onsite Services in accordance with Section 2(a)(4) below. Installation of any Patches, Upgrades, and Fixes may require Licensee to upgrade the Covered Software to the most current version. Installation of any additional Patches, Upgrades, and Fixes beyond the one (1) allotted as requested by Licensee will be available at the discretion of Northwoods. Licensee acknowledges and agrees that Northwoods has the right, at any time, to change the specifications and operating characteristics of the Covered Software, and Northwoods' policies respecting Patches, Upgrades and Fixes and the release thereof to end users. Any Patches, Upgrades and Fixes to the Covered Software and Documentation shall remain proprietary to Northwoods and/or its suppliers, shall be the sole and exclusive property of Northwoods and/or its suppliers, and shall be subject to all of the restrictions, limitations and protections of the EULA. All applicable rights to patents, copyrights, trademarks, other intellectual property rights, applications for any of the foregoing, and/or trade secrets in the Covered Software, Documentation, and any Patches, Upgrades and Fixes are and shall remain the exclusive property of Northwoods and/or its suppliers.

4) **Onsite Services.** Upon the reasonable request of Licensee, and submission of a purchase order for such services agreeing to pay for such services on a time and materials basis at Northwoods then-current rates for such services, Northwoods may provide Onsite Services at Licensee's facilities in connection with the correction of any Error(s) involving the Covered Software that is not functioning in the Covered Environments, or any Additional Environment(s).

- b. **Gold Level.** Gold Level Support includes everything outlined in Section 2(a) (Silver Level) above, plus the following:

1) **Remote Support of Covered Database(s).** Northwoods will provide remote, first line of support and troubleshooting for the support of any Covered Database. If, in the sole discretion of Northwoods, the issue requires escalation to the software manufacturer, Northwoods will act as a liaison between Licensee and the software manufacturer for support and troubleshooting.

2) **Remote Covered Operating System Support.** Northwoods will provide remote, first line of support and troubleshooting for the support of any Covered Operating System. If, in the sole discretion of Northwoods, the issue requires escalation to the software manufacturer, Northwoods will act as a liaison between Licensee and the software manufacturer for support and troubleshooting.

3) **Remote Support of Covered Third Party Applications.** Northwoods will provide remote, first line of support and troubleshooting for the support of any Covered Third Party



Applications. If, in the sole discretion of Northwoods, the issue requires escalation to the software manufacturer, Northwoods will act as a liaison between Licensee and the software manufacturer for support and troubleshooting.

- 4) **Remote Support of Covered Hardware.** Northwoods will provide remote, first line of support and troubleshooting for the support of any Covered Hardware. If, in the sole discretion of Northwoods, the issue requires escalation to the hardware manufacturer, Northwoods will act as a liaison between Licensee and the hardware manufacturer for support and troubleshooting.
- 5) **Onsite Services.** Upon the reasonable request of Licensee, and submission of a purchase order for such services agreeing to pay for such services on a time and materials basis at Northwoods then-current rates for such services, Northwoods may provide Onsite Services at Licensee's facilities in connection with the correction of any Error(s) involving the Covered Software that is not functioning in the Covered Environments, or any Additional Environment(s).
- c. **Platinum Level.** Platinum Level Support includes everything outlined in Sections 2(a) (Silver Level) and 2(b) (Gold Level) above, plus the following:
  - 1) **Onsite Services.** Northwoods will provide first line remote support and troubleshooting for all Covered Software, Covered Database Software, Covered Operating Systems, Covered Third Party Applications, and Covered Hardware. Should Northwoods be unable to successfully resolve the issue remotely, however, Northwoods will, in its sole discretion, provide one or more support professionals to provide Onsite Services for Licensee to actively resolve the issue. Onsite Services do not include installation, set up, or testing of new equipment, operator training or re-training, or replacement of Consumable Items. Onsite Services generally will be available during the hours of 8:00 a.m. to 5:00 p.m., in the time zone of Licensee, Monday through Friday, excluding Northwoods holidays.
  - 2) **Onsite Response Time.** Northwoods or Northwoods' appointed Agents or Subcontractors will use best efforts to provide timely response to all calls for service from Licensee. For purposes of this Agreement, timely response will be defined as a Northwoods consultant arriving at the Licensee's designated site within four (4) business operating hours (excluding travel time) (8:00am to 5:00pm in the time zone of Licensee, Monday through Friday, excluding Northwoods holidays) of Northwoods' determination that onsite support is required to address the Licensee's issues. This determination will be made by Northwoods exercising reasonable commercial discretion. Exceptions to the 4-hour on-site response time include any unforeseen events prohibiting Northwoods from meeting the response time that are reasonable and beyond the control of Northwoods.
  - 3) **Patches, Upgrades and Fixes.** To the extent that there are major Patches, Upgrades or Fixes to the Covered Software that cannot be installed by Northwoods remotely, and upon request of Licensee, Northwoods will make available up to one (1) major Patch, Upgrade or Fix per year to Licensee, will provide all professional services hours and resources necessary for such installation, and will train up to two (2) of Licensee's System Administrators on the new functionality of any such installation.
  - 4) **Server Health Checks.** Northwoods will conduct remote server checks on the memory capacity and general operation of Licensee's servers on a periodic (not less than monthly) basis and will communicate to Licensee's System Administrator concerns over the health of Licensee's servers.
  - 5) **Annual Assessment.** Licensee will receive a scheduled, annual visit by Northwoods' support manager or designee to assess Licensee's satisfaction with Northwoods' responsiveness to Licensee's needs and to respond to questions concerning the Compass® Software Support Agreement.
- d. **Exclusions.** Northwoods is not responsible for providing, or obligated to provide, Support Services or Patches, Upgrades and Fixes under this Agreement: (i) in connection with any Errors or Problems that result in whole or in part from any alteration, revision, change, enhancement or modification of any nature of the Covered Software, including any configuration of the Covered Software that was not undertaken by or authorized in writing in advance by Northwoods; (ii) in connection with any Error if Northwoods has previously provided corrections for such Error, which correction Licensee chose not to implement; (iii) in connection with any Errors or problems that have been caused by defects, alterations, revisions, changes, enhancements or modifications in the database, operating system, third party software (other than third party software bundled with the Software by Northwoods), hardware or any system or networking utilized by Licensee; (iv) if the Covered Software or related software or systems have been subjected to abuse, misuse, improper handling, accident or neglect; (v) if any party other than Northwoods has provided any services in the nature of Support Services to Licensee with respect to the Covered Software; (vi) in connection with any Errors or Problems that occur in any non-production environment, unless Licensee has elected to pay for additional environment support. Any upgrades, support, or troubleshooting requested for a non-production environment for which Licensee has not paid additional environment fees is available at the sole discretion of Northwoods and Northwoods reserves the right to bill for any such request on a time and materials basis at Northwoods then-current rates; (vii) where applicable, in connection with any hardware systems, operating systems, database systems, network operating systems, hardware drivers, or any software or hardware unless specifically "covered" by this Agreement and by the relevant Support Level pursuant to the defined terms hereinabove including, but not limited to, Citrix and Kerberos environments; or (viii) in connection with any Covered Hardware, Covered Database Software, Covered Operating Systems, Covered Third Party Applications, and

Covered DMS Software for which the manufacturer has ceased providing support. Further, except as otherwise explicitly provided for elsewhere, Northwoods is not responsible for end user training or retraining, preventative support visits by Northwoods technicians, forms creation services of any type, business process consulting, workflow lifecycle creation or modification, services to bring the system back to working order after changes have been made by anyone other than Northwoods to the system or supporting systems, to the desktop image, to hardware, new operating systems, or repairs or adjustments necessitated by the moving of hardware. The exclusions outlined in this section are applicable to all levels of Software Support.

### 3. LICENSEE'S RESPONSIBILITIES.

- a. **Operation of the Covered Software.** Licensee acknowledges and agrees that it is solely responsible for the operation, supervision, management and control of the Covered Software, including but not limited to providing training for its personnel, instituting appropriate security procedures and implementing reasonable procedures to examine and verify all output before use. In addition, Licensee is solely responsible for its data, its database, and for maintaining suitable backups of the data and database to prevent data loss in the event of any hardware or software malfunction. Northwoods shall have no responsibility or liability for data loss regardless of the reasons for said loss. Northwoods shall have no responsibility or liability for Licensee's selection or use of the Covered Software or any hardware, third party software or systems.
  - b. **Licensee's Implementation of Error Corrections and Patches, Upgrades and Fixes.** In order to maintain the integrity and proper operation of the Covered Software, Licensee agrees to implement, in the manner instructed by Northwoods, all Error corrections and Patches, Upgrades and Fixes. Licensee's failure to implement any Error corrections or Patches, Upgrades and Fixes of the Covered Software as provided in this Section 3(b) shall relieve Northwoods of any responsibility or liability whatsoever for any failure or malfunction of the Covered Software, as modified by a subsequent Error correction or Patch, Upgrade and Fix, but in no such event shall Licensee be relieved of the responsibility for the payment of fees and charges otherwise properly invoiced during the term hereof.
  - c. **System Administrator.** Licensee agrees to provide at least one (1) "System Administrator" responsible for the administration, supervision, management, and control of the Covered Software. Licensee also agrees that all Covered Software support incidents raised by Licensee's personnel will be reported to the System Administrator, who will provide the initial research, investigation, and troubleshooting into the support incident. In the event the support incident can be resolved without Northwoods, the System Administrator will provide the support resolution to Licensee personnel. If, after initial research and investigation into a support question, the System Administrator determines there is an Error or Problem with the Covered Software, the System Administrator will report the Error or Problem to Northwoods. Licensee agrees that all communications regarding Covered Software Errors and Problems will be between the System Administrator and Northwoods.
  - d. **Notice and Documentation of Errors.** Licensee shall give prompt notice of any Errors in the Covered Software discovered by Licensee, or otherwise brought to the attention of Licensee, in accordance with Northwoods' then current defect reporting procedures. Proper notice may include, without limitation, prompt telephonic or written notice to Northwoods of any alleged Error. If Northwoods requests, Licensee agrees to provide written documentation of Errors to substantiate them and to assist Northwoods in the detection and correction of said Errors.
  - e. **Access to Premises and Systems.** Licensee shall provide reasonable access to and use of Licensee's premises, computer hardware, peripherals, Covered Software, and any other software as Northwoods deems necessary to diagnose and correct any Errors or to otherwise provide Support Services. In addition, Licensee acknowledges and agrees that a third party service provider may be retained by Northwoods to provide Error corrections or other Support Services directly to Licensee and, accordingly, Licensee shall provide the same access directly to such service provider. Such right of access and use shall be provided at no cost or charge to Northwoods or the third party service provider.
  - f. **Network Infrastructure.** Licensee agrees to maintain all required network infrastructure to ensure persistent connectivity between Licensee's workstations and servers. This includes necessary networking hardware and associated software configuration and security settings.
  - g. **Back-ups.** Licensee agrees to perform daily back-ups of all application related systems, databases, and data files and to maintain current back-up copies of other pertinent systems and data files.
- ### 4. FEES, PAYMENTS, CURRENCY AND TAXES.
- a. **Annual Support Fees.** Licensee shall pay to Northwoods annual support fees in the amounts invoiced by Northwoods including all taxes, fees.
    - 1) **Initial Software.** The invoice that will be provided pursuant to this Agreement shall set forth the aggregate invoice amounts for initial annual support fees for each Covered Software module(s) initially licensed, and for all Covered Software modules initially licensed in the aggregate. Licensee shall be required to submit a purchase order for this Agreement, in the amount of the initial annual support fees due hereunder, simultaneously with Licensee's submission of its purchase order for the license of the Covered Software under the EULA.
    - 2) **Additional Software.** Northwoods shall invoice Licensee for annual support fees for all Covered Software modules that Licensee additionally licenses under the EULA promptly upon acceptance of Licensee's purchase order for the purchase of Support Services for such Covered Software.



- 3) **Renewal Periods.** Northwoods shall invoice Licensee for annual support fees for renewal terms at least sixty (60) days prior to the end of the then-current term.
- 4) **Time and Materials Charges.** Notwithstanding anything to the contrary, if Licensee requests: (1) Support Services that Northwoods is not obligated to provide based on the level of support purchased by Licensee, and Northwoods agrees to provide such requested Support Services notwithstanding the provisions of Section 2(d), then Licensee agrees that such Support Services shall not be covered by the annual support fees under Section 4(a). Licensee agrees to pay for such Support Services at Northwoods' standard time and materials rates. Northwoods shall invoice Licensee for all time and materials charges hereunder.
- b. **Incidental Costs and Expenses.** Licensee shall be responsible for all incidental costs and expenses incurred by Northwoods in connection with the performance of this Agreement. Examples of incidental costs and expenses include, without limitation, all costs and expenses for tools, supplies, accessories, media and other expendables purchased or otherwise used by Northwoods, on-line connection charges and out-of-pocket expenses incurred at Licensee's request, including but not limited to travel, meals and lodging expenses for Onsite Services. Northwoods shall invoice Licensee for all incidental costs and expenses provided pursuant to Sections 2(a)(4) and 2(b)(5).
- c. **Payments; Remedies.**
- 1) **Annual Support Fees.** Licensee shall pay all invoices for annual support fees in full net thirty (30) days from the date of approved invoice.
  - 2) **Other Payments.** Licensee shall pay all other invoices hereunder in full net thirty (30) days from the date of approved invoice.
  - 3) **Remedies.** All past due amounts shall bear interest at the rate of one and one-half percent (1.5%) per month (or, if lower, the maximum lawful rate) from the date due through the date that such past due amounts and such accrued interest are paid in full. In the event of any default by Licensee in the payment of any amounts due hereunder, which default continues un-remedied for at least ten (10) calendar days after the due date of such payment, Northwoods shall have the right to cease to provide any Support Services and Upgrades and Enhancements to Licensee unless and until such default, and any and all other defaults by Licensee hereunder, have been cured.
  - 4) **U.S. Dollars.** All payments by Licensee to Northwoods shall be made in U.S. dollars.
- d. **Taxes and Governmental Charges.** In addition to any and all other payments required to be made by Licensee hereunder, Licensee shall pay all taxes and governmental charges, foreign, federal, state, local or otherwise (other than income or franchise taxes of Northwoods), however designated, which are levied or imposed by reason of the transactions contemplated by this Agreement, including but not limited to sales and use taxes, excise taxes and customs duties or charges. Licensee agrees to make any and all required tax payments directly to the appropriate taxing authority.
- e. **Support Fee Increases.**
- 1) **Silver Level.** Northwoods will increase annual support fees for each renewal term, provided that such increase for Compass software will not exceed, in the aggregate, the greater of (A) the annual support fee for the immediately preceding renewal term increased by the percentage increase in the Consumer Price Index (CPI) (as published by the United States Department of Labor, Bureau of Labor Statistics) for the 12-month period preceding the renewal date, or (B) the annual support fee for the immediately preceding renewal term increased by three and one-half percent (3 ½%).
  - 2) **Gold Level.** For a period of three (3) years following the execution of this Agreement, provided Licensee remains current on its payments at the Gold Level, Northwoods will not increase the support fees payable under this Agreement for Compass software. At the end of the initial three (3) year term, and every three (3) years thereafter, Northwoods will increase the support fee in an amount that is the greater of (A) the annual support fee for the immediately preceding renewal term increased by the percentage increase in the Consumer Price Index (CPI) (as published by the United States Department of Labor, Bureau of Labor Statistics) for the 12-month period preceding the renewal date, or (B) the annual support fee for the immediately preceding renewal term increased by three and one-half percent (3 ½%).
  - 3) **Platinum Level.** For a period of five (5) years following the execution of this Agreement, provided Licensee remains current on its payments at the Platinum Level, Northwoods will not increase the support fees payable under this Agreement for Compass software. At the end of the initial five (5) year term, and every five (5) years thereafter, Northwoods will increase the support fee in an amount that is the greater of (A) the annual support fee for the immediately preceding renewal term increased by the percentage increase in the Consumer Price Index (CPI) (as published by the United States Department of Labor, Bureau of Labor Statistics) for the 12-month period preceding the renewal date, or (B) the annual support fee for the immediately preceding renewal term increased by three and one-half percent (3 ½%).
  - 4) Notwithstanding the above, any price increase by Northwoods' partners or suppliers for software specifically "Covered" under this agreement will be passed through to Licensee regardless of Support Level.
5. **LIMITED WARRANTY.**
- a. **Limited Warranty of Services.** Northwoods warrants that the Support Services shall be performed in a good and workmanlike manner and substantially according to industry standards. In order to assert any claim that any Support Services fail to conform to this limited warranty, Licensee must notify Northwoods in writing of such claim within thirty (30) days after the date the alleged non-conforming Services are completed. If, after such timely notice from Licensee, the Support Services in question are determined not to

conform to this limited warranty, Northwoods' sole obligation, and Licensee's sole remedy, shall be for Northwoods to use commercially reasonable efforts to re-perform the nonconforming Support Services in an attempt to correct the nonconformity. If Northwoods is unable to correct such nonconformity after a reasonable period of time, Licensee's sole and exclusive remedy shall be termination of this Agreement in accordance with Section 7(b)(3)(B). This warranty specifically excludes non-performance issues caused as a result of any circumstances described in Section 2(d), incorrect data or incorrect procedures used or provided by Licensee or a third party, or failure of Licensee to perform and fulfill its obligations under this Agreement or the EULA.

- b. **No Warranty of Patches, Upgrades and Fixes.** The EULA shall govern any limited warranty or disclaimer relating to Patches, Upgrades and Fixes of the Covered Software provided to Licensee under this Agreement, and no warranty is given under this Agreement with respect to Patches, Upgrades and Fixes.
- c. **DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 5(a), NORTHWOODS MAKES NO WARRANTIES OR REPRESENTATIONS REGARDING ANY SUPPORT SERVICES, ANY SOFTWARE OR ANY PATCHES, UPGRADES AND FIXES PROVIDED UNDER THIS AGREEMENT. NORTHWOODS DISCLAIMS AND EXCLUDES ANY AND ALL OTHER EXPRESS, IMPLIED AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF GOOD TITLE, WARRANTIES AGAINST INFRINGEMENT, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES THAT MAY BE DEEMED TO ARISE FROM ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. NORTHWOODS DOES NOT WARRANT THAT ANY SUPPORT SERVICES, SOFTWARE OR PATCHES, UPGRADES AND FIXES PROVIDED WILL SATISFY LICENSEE'S REQUIREMENTS OR ARE WITHOUT DEFECT OR ERROR, OR THAT THE OPERATION OF ANY SOFTWARE OR PATCHES, UPGRADES AND FIXES WILL BE UNINTERRUPTED. NORTHWOODS DOES NOT ASSUME ANY LIABILITY WHATSOEVER WITH RESPECT TO ANY THIRD-PARTY HARDWARE, FIRMWARE, SOFTWARE OR SERVICES.
6. **LIMITATIONS OF LIABILITY.** IN NO EVENT SHALL NORTHWOODS' AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE AGGREGATE AMOUNTS PAID BY LICENSEE TO NORTHWOODS UNDER THIS AGREEMENT DURING THE CURRENT TERM OF THIS AGREEMENT. IN NO EVENT SHALL NORTHWOODS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST SAVINGS, BUSINESS INTERRUPTION DAMAGES OR EXPENSES, THE COSTS OF SUBSTITUTE SOFTWARE OR SERVICES, LOSSES RESULTING FROM ERASURE, DAMAGE, DESTRUCTION OR OTHER LOSS OF FILES, DATA OR PROGRAMS OR THE COST OF RECOVERING SUCH INFORMATION, OR OTHER PECUNIARY LOSS, EVEN IF NORTHWOODS HAS BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES OR LOSSES. THIS LIMITATION INCLUDES ANY LOSS RESULTING FROM SERVER FAILURE THAT WAS NOT DIAGNOSED DURING A SERVER HEALTH CHECK CONDUCTED BY NORTHWOODS.
7. **TERM, RENEWAL AND TERMINATION.**
- a. **Term.** Subject to the early termination provisions of Section 7(b), the initial term of this Agreement (the "Initial Term") shall commence on the day that Northwoods issues to Licensee license codes for the Covered Software modules licensed by Licensee under the EULA and shall expire on the first anniversary of such date. Except as otherwise provided in Section 7(c)(3) below, the Agreement term will be September 1, 2019 through August 31, 2020.
- b. **Early Termination.**
- 1) **Automatic.** This Agreement shall terminate automatically, without any other or further action on the part of either of the parties, immediately upon any termination of the EULA.
  - 2) **By Northwoods for Cause.** Northwoods shall be entitled to give written notice to Licensee of any breach by Licensee or other failure by Licensee to comply with any material term or condition of the EULA or this Agreement, specifying the nature of such breach or non-compliance and requiring Licensee to cure the breach or non-compliance. If Licensee has not cured, or commenced to cure (if a cure cannot be performed within the time period set forth below), the breach or non-compliance within (A) in the case of non-payment, any breach of Section 1 of the EULA, or any breach of Section 3 of this Agreement, ten (10) calendar days after receipt of such written notice, or (B) in the case of any other breach or non-compliance, twenty (20) business days after receipt of such written notice, Northwoods shall be entitled, in addition to any other rights it may have hereunder, or otherwise at law or in equity, to immediately terminate this Agreement.
  - 3) **By Licensee.**
    - A) **For Convenience.** Licensee may terminate this Agreement at any time, for any reason, upon not less than sixty (60) days advance written notice to Northwoods.
    - B) **For Cause.** Licensee shall be entitled to give written notice to Northwoods of any breach by Northwoods or other failure by Northwoods to comply with any material term or condition of this Agreement, specifying the nature of such breach or non-compliance and requiring Northwoods to cure the breach or non-compliance. If Northwoods has not cured, or commenced to cure (if a cure cannot be performed within the time period set forth below), the breach or non-compliance within twenty (20) business days after receipt of written notice, Licensee shall be entitled, in addition to any other rights it may have under this Agreement, or otherwise at law or in equity, to immediately terminate this Agreement; and thereafter, so long as Licensee has complied in all material respects with its obligations under the EULA and this Agreement, and is current on all payment obligations under the EULA and



this Agreement, Licensee shall be entitled to a refund from Northwoods of the "unused portion of the annual support fees" for the then-current term of this Agreement. For these purposes, the "unused portion of the annual support fees" shall mean that portion of the annual support fees paid by Licensee with respect to the term of this Agreement during which such termination of this Agreement is effective, equal to the total of such annual support fees multiplied by a fraction, the numerator of which shall be the number of calendar months during the then-current term of this Agreement that remain until the end of such then-current term, commencing with the calendar month after the calendar month in which such termination is effective, and the denominator of which shall be the total number of calendar months in such then-current term determined without regard to such termination.

C) **Non-Renewal.** Licensee may elect not to renew this Agreement at the end of the then-current term of this Agreement by written notice to Northwoods on or prior to the date payment is due under Section 4(c)(1) of Northwoods' invoice for annual support fees for the next succeeding renewal term of this Agreement.

4) **By Either Party in Accordance with Section 8.** Either party may terminate this Agreement in accordance with the procedures set forth in Section 8.

C. **Effect of Termination.**

1) **Payments.** Notwithstanding any termination of this Agreement, Licensee shall be obligated to pay Northwoods for (A) all Support Services provided on a time and materials basis in accordance with this Agreement at any time on or prior to the effective date of termination; (B) all annual support fees due with respect to any period commencing prior to the effective date of termination; and (C) all incidental costs and expenses incurred by Northwoods at any time on or prior to the effective date of termination. All such payments shall be made in accordance with Section 4, which shall survive any such termination for these purposes.

2) **Survival of Obligations.** The termination of this Agreement will not discharge or otherwise affect any pre-termination obligations of either party existing under the Agreement at the time of termination. The provisions of this Agreement which by their nature extend beyond the termination of the Agreement will survive and remain in effect until all obligations are satisfied, including, but not limited to, Sections 2(a)(3) and 2(c)(3) (as they relate to title and ownership), Section 4(d), Section 5(c), Section 6, Section 7, Section 9 and Section 10. No action arising out of this Agreement, regardless of the form of action, may be brought by Licensee more than one (1) year after the date the action accrued.

3) **Reinstatement of Agreement.** In the event of the termination of this Agreement by Licensee under Section 7(b)(3)(C) (Non-Renewal), Licensee may at any time after the effective date of such termination elect to reinstate this Agreement in accordance with this Section 7(c)(3). To obtain reinstatement, Licensee shall deliver written notice to such effect to Northwoods, together with payment in full of: (A) annual support fees, based upon Northwoods' Annual Support Fee Schedule in effect as of the time of such reinstatement, for all periods (as determined under Section 7(a) as if the Agreement had not been terminated under Section 7(b)(3)(C)) that have elapsed from the effective date of such termination through the effective date of such reinstatement; and (B) an amount equal to one hundred ten percent (110%) of the annual support fee, based upon Northwoods' Annual Support Fee Schedule in effect as of the time of such reinstatement, for the renewal term of this Agreement commencing on the effective date of such reinstatement. Any reinstatement under this Section 7(c)(3) shall be effective as of the first business day after Northwoods has received the notice of reinstatement and all payments required to be made hereunder in connection with such reinstatement. The renewal term commencing with the effective date of this Agreement shall be for a period ending on the first annual anniversary of such effective date; and thereafter the term of this Agreement shall be renewed: (i) at the end of such first renewal term, for a period of one year; and (ii) thereafter, annually on a year by year basis.

**EXCEPT AS EXPRESSLY PROVIDED BY THIS SECTION 7(c)(3), LICENSEE SHALL HAVE NO RIGHT TO REINSTATE THIS AGREEMENT FOLLOWING THE TERMINATION THEREOF FOR ANY REASON.**

8. **FORCE MAJEURE.** No failure, delay or default in performance of any obligation of a party to this Agreement (except the payment of money) shall constitute a default or breach to the extent that such failure to perform, delay or default arises out of a cause, existing or future, beyond the control (including, but not limited to: action or inaction of governmental, civil or military authority; fire; strike, lockout or other labor dispute; flood; war; riot; theft; earthquake; natural disaster or acts of God; national emergencies; unavailability of materials or utilities; sabotage; viruses; or the act, negligence or default of the other party) and without negligence or willful misconduct of the party otherwise chargeable with failure, delay or default. Either party desiring to rely upon any of the foregoing as an excuse for failure, default or delay in performance shall, when the cause arises, give to the other party prompt notice in writing of the facts which constitute such cause; and, when the cause ceases to exist, give prompt notice of that fact to the other party. This Section 8 shall in no way limit the right of either party to make any claim against third parties for any damages suffered due to said causes. If any performance date by a party under this Agreement is postponed or extended pursuant to this Section 8 for longer than ninety (90) calendar days, the other party, by written notice given during the postponement or

extension, and at least thirty (30) days prior to the effective date of termination, may terminate this Agreement.

9. **NOTICES.** Unless otherwise agreed to by the parties in a writing signed by both parties, all notices required under this Agreement shall be deemed effective: (a) when sent and made in writing by either (1)(A) registered mail, (B) certified mail, return receipt requested, or (C) overnight courier, in any such case addressed and sent to the address set forth herein and to the attention of the person executing this Agreement on behalf of that party or that person's successor, or to such other address or such other person as the party entitled to receive such notice shall have notified the party sending such notice of; or (2) facsimile transmission appropriately directed to the attention of the person identified as the appropriate recipient and at the appropriate address under (a)(1) above, with a copy following by one of the other methods of notice under (a)(1) above; or (b) when personally delivered and made in writing to the person and address identified as appropriate under (a)(1) above.

10. **GENERAL PROVISIONS.**

a. **Jurisdiction.** This Agreement and any claim, action, suit, proceeding, or dispute arising out of this Agreement shall in all respects be governed by, and interpreted in accordance with, the substantive laws of the State of Ohio without regard to its conflicts of laws provisions. Venue and jurisdiction for any action, suit, or proceeding arising out of this Agreement shall vest exclusively in the federal or state courts of general jurisdiction in Franklin County, Ohio.

b. **Interpretation.** Headings used in this Agreement are for reference and convenience purposes only and shall not in any way limit or affect the meaning or interpretation of any of the terms hereof. All defined terms in this Agreement shall be deemed to refer to the masculine, feminine, neuter, singular or plural, in each instance as the context or particular facts may require. Use of "hereunder," "herein," "hereby" and similar terms refer to this Agreement.

c. **Waiver.** No waiver of any right or remedy on one occasion by either party shall be deemed a waiver of such right or remedy on any other occasion.

d. **Integration.** This Agreement, including any and all exhibits and schedules referred to herein or therein, sets forth the entire agreement and understanding between the parties pertaining to the subject matter and merges all prior discussions between them on the same subject matter. Neither of the parties shall be bound by any conditions, definitions, warranties, understandings or representations with respect to the subject matter other than as expressly provided in this Agreement. This Agreement may only be modified by a written document signed by duly authorized representatives of the parties. This Agreement shall not be supplemented or modified by any course of performance, course of dealing or trade usage. Variance from or addition to the terms and conditions of this Agreement in any purchase order or other written notification or documentation, from Licensee or otherwise, will be of no effect unless expressly agreed to in writing by both parties. This Agreement will prevail over any conflicting stipulations contained or referenced in any other document.

e. **Binding Agreement and Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. Northwoods may assign this Agreement or its rights or obligations under this Agreement, in whole or in part, to any other person or entity. Licensee may not assign this Agreement or its rights or obligations under this Agreement, in whole or in part, to any other person or entity without the prior written consent of Northwoods. Any change in control of Licensee resulting from an acquisition, merger or otherwise shall constitute an assignment under the terms of this provision. Any assignment made without compliance with the provisions of this Section 10(e) shall be null and void and of no force or effect.

f. **Severability.** In the event that any term or provision of this Agreement is deemed by a court of competent jurisdiction to be overly broad in scope, duration or area of applicability, the court considering the same will have the power and is hereby authorized and directed to limit such scope, duration or area of applicability, or all of them, so that such term or provision is no longer overly broad and to enforce the same as so limited. Subject to the foregoing sentence, in the event any provision of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will attach only to such provision and will not affect or render invalid or unenforceable any other provision of this Agreement.

g. **Independent Contractor.** The parties acknowledge that Northwoods is an independent contractor and that it will be responsible for its obligations as employer for those individuals providing the Support Services.

h. **Export.** Licensee agrees to comply fully with all relevant regulations of the U.S. Department of Commerce and all U.S. export control laws, including but not limited to the U.S. Export Administration Act, to assure that the Patches, Upgrades and Fixes are not exported in violation of United States law.

i. **Injunctive Relief.** The parties to this Agreement recognize that a remedy at law for a breach of the provisions of this Agreement relating to confidential information and intellectual property rights will not be adequate for Northwoods' protection and, accordingly, Northwoods shall have the right to obtain, in addition to any other relief and remedies available to it, specific performance or injunctive relief to enforce the provisions of this Agreement.



IN WITNESS WHEREOF, the undersigned, authorized representatives of the parties have duly executed this Software Support Agreement.

**On behalf of Licensee:**

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Printed Name Title

**On behalf of Northwoods:**

DocuSigned by:  
A blue ink signature of Chris Carlson, consisting of a stylized 'C' and 'L'.

8/14/2019 | 4:15 PM EDT

\_\_\_\_\_  
Signature 73618558BD0C4DF... Date

Chris Carlson

EVP/CGAO

\_\_\_\_\_  
Printed Name Title



## ATTACHMENT SP

### Service Provider Supplemental Attachment

This attachment is part of the agreement between Northwoods Consulting Partners, Inc. and the County of San Mateo.

#### I. Contract Term

The term of this Agreement shall be September 1, 2019 through August 31, 2020. In the event of a conflict between a provision in this Attachment SP and a provision in the Northwoods silver level software support agreement, the provision in this Attachment SP shall govern.

#### II. Contract Dollar Amount

The total amount for services under this Agreement shall not exceed FOUR HUNDRED FOUR THOUSAND SEVEN HUNDRED FIFTEEN DOLLARS (\$404,715).

#### III. AVAILABILITY OF FUNDS

County may immediately terminate this Agreement based upon unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of funding.

#### IV. PERFORMANCE MEASURES

Contractor agrees to meet the following performance measure for the term of the Agreement: 95% of each request for technical support will be responded to within four hours of receipt of request.

#### V. EQUAL BENEFITS ORDINANCE

Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Contractor's employee is of the same or opposite sex as the employee.

#### VI. EMPLOYEE JURY SERVICE

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor

shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed in the Section titled "Payments", is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

#### VII. HISTORY OF DISCRIMINATION

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

#### VIII. HOLD HARMLESS

Contractor agrees to indemnify and defend County and its employees and agents from any and all claims,



damages, and liability in any way occasioned by or arising out of the negligence of Contractor and/or its employees/officers/agents in the performance of this Agreement, including any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with any law, regulation, or ordinance, including but not limited to those listed in this Agreement.

## IX. ELECTRONIC SIGNATURE

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

## Attachment P

### Personally Identifiable Information Requirements for County Contractors, Subcontractors, Vendors and Agents

#### I. Definitions

Personally Identifiable Information (PII), or Sensitive Personal Information (SPI), as used in Federal information security and privacy laws, is information that can be used on its own or with other information to identify, contact, or locate a single person, or to identify an individual in context. PII may only be used to assist in the administration of programs in accordance with 45 C.F.R. § 205.40, *et seq.* and California Welfare & Institutions Code section 10850.

- a. **"Assist in the Administration of the Program"** means performing administrative functions on behalf of County programs, such as determining eligibility for, or enrollment in, and collecting context PII for such purposes, to the extent such activities are authorized by law.
- b. **"Breach"** refers to actual loss, loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for other than authorized purposes have access or potential access to context PII, whether electronic, paper, verbal, or recorded.
- c. **"Contractor"** means those contractors, subcontractors, vendors and agents of the County performing any functions for the County that require access to and/or use of PII and that are authorized by the County to access and use PII.
- d. **"Personally Identifiable Information" or "PII"** is personally identifiable information that can be used alone, or in conjunction with any other reasonably available information, to identify a specific individual. PII includes, but is not limited to, an individual's name, social security number, driver's license number, identification number, biometric records, date of birth, place of birth, or mother's maiden name. PII may be electronic, paper, verbal, or recorded.

- e. **“Security Incident”** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PII, or interference with system operations in an information system which processes PII that is under the control of the County or County’s Statewide Automated Welfare System (SAWS) Consortium, or under the control of a contractor, subcontractor or vendor of the County, on behalf of the County.
- f. **“Secure Areas”** means any area where:
  - i. Contractors administer or assist in the administration of County programs;
  - ii. PII is used or disclosed; or
  - iii. PII is stored in paper or electronic format.

## **II. Restrictions on Contractor re Use and Disclosure of PII**

- a. Contractor agrees to use or disclose PII only as permitted in this Agreement and only to assist in the administration of programs in accordance with 45 CFR § 205.50, *et seq.* and California Welfare & Institutions Code section 10850 or as otherwise authorized or required by law. Disclosures, when authorized or required by law, such as in response to a court order, or when made upon the explicit written authorization of the individual, who is the subject of the PII, are allowable. Any other use or disclosure of PII requires the express approval in writing by the County. No Contractor shall duplicate, disseminate or disclose PII except as allowed in this Agreement.
- b. Contractor agrees to only use PII to perform administrative functions related to the administration of County programs to the extent applicable.
- c. Contractor agrees that access to PII shall be restricted to Contractor’s staff who need to perform specific services in the administration of County programs as described in this Agreement.

- d. Contractor understands and agrees that any of its staff who accesses, discloses or uses PII in a manner or for a purpose not authorized by this Agreement may be subject to civil and criminal sanctions available under applicable Federal and State laws and regulations

## **III. Use of Safeguards by Contractor to Protect PII**

- a. Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides PII received from, or created or received by Contractor on behalf of County, agrees to adhere to the same restrictions and conditions contained in this Attachment PII.
- b. Contractor agrees to advise its staff who have access to PII, of the confidentiality of the information, the safeguards required to protect the information, and the civil and criminal sanctions for non-compliance contained in applicable Federal and State laws and regulations.
- c. Contractor agrees to train and use reasonable measures to ensure compliance by Contractor’s staff, including, but not limited to (1) providing initial privacy and security awareness training to each new staff within thirty (30) days of employment; (2) thereafter, providing annual refresher training or reminders of the PII privacy and security safeguards to all Contractor’s staff; (3) maintaining records indicating each Contractor’s staff name and the date on which the privacy and security awareness training was completed; and (4) retaining training records for a period of seven (7) years after completion of the training.
- d. Contractor agrees to provide documented sanction policies and procedures for Contractor’s staff who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment when appropriate.
- e. Contractor agrees that all Contractor’s staff performing services under this Agreement sign a confidentiality statement prior to accessing PII and annually thereafter. The signed statement shall be retained for a

- period of seven (7) years, and the statement include at a minimum: (1) general use; (2) security and privacy safeguards; (3) unacceptable use; and (4) enforcement policies.
- f. Contractor agrees to conduct a background check of Contractor's staff before they may access PII with more thorough screening done for those employees who are authorized to bypass significant technical and operational security controls. Contractor further agrees that screening documentation shall be retained for a period of seven (7) years following conclusion of the employment relationship.
  - g. Contractor agrees to conduct periodic privacy and security reviews of work activity, including random sampling of work product by Contractor's staff by management level personnel who are knowledgeable and experienced in the areas of privacy and information security in the administration of County's programs and the use and disclosure of PII. Examples include, but are not limited to, access to data, case files or other activities related to the handling of PII.
  - h. Contractor shall ensure that PII is used and stored in an area that is physically safe from access by unauthorized persons at all times and safeguard PII from loss, theft, or inadvertent disclosure by securing all areas of its facilities where Contractor's staff assist in the administration of the County's programs and use, disclose, or store PII.
  - i. Contractor shall ensure that each physical location, where PII is used, disclosed, or stored, has procedures and controls that ensure an individual who is terminated from access to the facility is promptly escorted from the facility by an authorized employee of Contractor and access is revoked.
  - j. Contractor shall ensure that there are security guards or a monitored alarm system at all times at Contractor's facilities and leased facilities where five hundred (500) or more individually identifiable records of PII is used, disclosed, or stored. Video surveillance systems are recommended.
- k. Contractor shall ensure that data centers with servers, data storage devices, and/or critical network infrastructure involved in the use, storage, and/or processing of PII have perimeter security and physical access controls that limit access to only those authorized by this Agreement. Visitors to any Contractor data centers area storing PII as a result of administration of a County program must be escorted at all times by authorized Contractor's staff.
  - l. Contractor shall have policies that include, based on applicable risk factors, a description of the circumstances under which Contractor staff can transport PII, as well as the physical security requirements during transport.
  - m. Contractor shall ensure that any PII stored in a vehicle shall be in a non-visible area such as a trunk, that the vehicle is locked, and under no circumstances permit PII be left unattended in a vehicle overnight or for other extended periods of time.
  - n. Contractor shall ensure that PII shall not be left unattended at any time in airplanes, buses, trains, etc., including baggage areas. This should be included in training due to the nature of the risk.
  - o. Contractor shall ensure that all workstations and laptops, which use, store and/or process PII, must be encrypted using a FIPS 140-2 certified algorithm 128 bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk. It is encouraged, when available and when feasible, that the encryption be 256 bit.
  - p. Contractor shall ensure that servers containing unencrypted PII must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review. It is recommended to follow the guidelines documented in the latest revision of the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-53, Security and Privacy Controls for Federal Information Systems and Organizations.



- q. Contractor agrees that only the minimum necessary amount of PII required to perform required business functions will be accessed, copied, downloaded, or exported.
- r. Contractor shall ensure that all electronic files, which contain PII data is encrypted when stored on any mobile device or removable media (i.e. USB drives, CD/DVD, smartphones, tablets, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm 128 bit or higher, such as AES. It is encouraged, when available and when feasible, that the encryption be 256 bit.
- s. Contractor shall ensure that all workstations, laptops and other systems, which process and/or store PII, must install and actively use an antivirus software solution. Antivirus software should have automatic updates for definitions scheduled at least daily. In addition, Contractor shall ensure that:
  - i. All workstations, laptops and other systems, which process and/or store PII, must have critical security patches applied, with system reboot if necessary.
  - ii. There must be a documented patch management process that determines installation timeframe based on risk assessment and vendor recommendations.
  - iii. At a maximum, all applicable patches deemed as critical must be installed within thirty (30) days of vendor release. It is recommended that critical patches which are high risk be installed within seven (7) days.
  - iv. Applications and systems that cannot be patched within this time frame, due to significant operational reasons, must have compensatory controls implemented to minimize risk.
- t. Contractor shall ensure that all of its staff accessing Personally Identifiable Information on applications and systems will be issued a unique individual password that is a least eight (8) characters, a non-dictionary word, composed of characters from at least three (3) of the following four (4) groups from the standard keyboard: upper case letters (A-Z); lower case letters (a-z); Arabic numerals (0-9) and special characters (!, @, #, etc.). Passwords are not to be shared and changed if revealed or compromised. All passwords must be changed every (90) days or less and must not be stored in readable format on the computer or server.
- u. Contractor shall ensure that usernames for its staff authorized to access PII will be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee within twenty- four (24) hours. Note: Twenty-four (24) hours is defined as one (1) working day.
- v. Contractor shall ensure when no longer needed, all PII must be cleared, purged, or destroyed consistent with NIST SP 800-88, Guidelines for Media Sanitization, such that the Personally Identifiable Information cannot be retrieved.
- w. Contractor shall ensure that all of its systems providing access to PII must provide an automatic timeout, requiring re-authentication of the user session after no more than twenty (20) minutes of inactivity.
- x. Contractor shall ensure that all of its systems providing access to PII must display a warning banner stating, at a minimum that data is confidential; systems are logged, systems use is for business purposes only by authorized users and users shall log off the system immediately if they do not agree with these requirements.
- y. Contractor will ensure that all of its systems providing access to PII must maintain an automated audit trail that can identify the user or system process which initiates a request for PII, or alters PII. The audit trail shall be date and time stamped; log both successful and failed accesses be read-access only; and be restricted to authorized users. If PII is stored in a database, database logging functionality shall be enabled. The audit trail data shall be archived for at least seven (7) years from the occurrence.



- z. Contractor shall ensure that all of its systems providing access to PII shall use role-based access controls for all user authentications, enforcing the principle of least privilege.
- aa. Contractor shall ensure that all data transmissions of PII outside of its secure internal networks must be encrypted using a Federal Information Processing Standard (FIPS) 140-2 certified algorithm that is 128 bit or higher, such as Advanced Encryption Standard (AES) or Transport Layer Security (TLS). It is encouraged, when available and when feasible, that 256 bit encryption be used. Encryption can be end to end at the network level, or the data files containing PII can be encrypted. This requirement pertains to any type of PII in motion such as website access, file transfer, and email.
- bb. Contractor shall ensure that all of its systems involved in accessing, storing, transporting, and protecting PII, which are accessible through the Internet, must be protected by an intrusion detection and prevention solution.
- cc. Contractor shall ensure that audit control mechanisms are in place. All Contractor systems processing and/or storing Personally Identifiable Information must have a least an annual system risk assessment/security review that ensure administrative, physical, and technical controls are functioning effectively and provide an adequate level of protection. Review shall include vulnerability scanning tools.
- dd. Contractor shall ensure that all of its systems processing and/or storing PII must have a process or automated procedure in place to review system logs for unauthorized access.
- ee. Contractor shall ensure that all of its systems processing and/or storing PII must have a documented change control process that ensures separation of duties and protects the confidentiality, integrity and availability of data.
- ff. Contractor shall establish a documented plan to enable continuation of critical business processes and protection of the security of PII kept in an electronic format in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than twenty-four (24) hours.
- gg. Contractor shall ensure its data centers with servers, data storage devices, and critical network infrastructure involved in the use, storage and/or processing of PII, must include environmental protection such as cooling, power, and fire prevention, detection, and suppression.
- hh. Contractor shall establish documented procedures to backup PII to maintain retrievable exact copies of PII. The documented backup procedures shall contain a schedule which includes incremental and full backups, storing backups offsite, inventory of backup media, recovery of PII data, an estimate of the amount of time needed to restore PII data.
- ii. Contractor shall ensure that PII in paper form shall not be left unattended at any time, unless it is locked space such as a file cabinet, file room, desk or office. Unattended means that information may be observed by an individual not authorized to access the information. Locked spaces are defined as locked file cabinets, locked file rooms, locked desks, or locked offices in facilities which are multi-use, meaning that there are Contractor's staff and non-Contractor functions in one building in work areas that are not securely segregated from each other. It is recommended that all PII be locked up when unattended at any time, not just within multi-use facilities.
- jj. Contractor shall ensure that any PII that must be disposed of will be through confidential means, such as cross cut shredding or pulverizing.
- kk. Contractor agrees that PII must not be removed from its facilities except for identified routine business purposes or with express written permission of the County.



- II. Contractor shall ensure that faxes containing PII shall not be left unattended and fax machines shall be in secure areas. Faxes containing PII shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them and notify the sender. All fax numbers shall be verified with the intended recipient before send the fax.

- mm. Contractor shall ensure that mailings containing PII shall be sealed and secured from damage or inappropriate viewing of PII to the extent possible. Mailings that include five hundred (500) or more individually identifiable records containing PII in a single package shall be sent using a tracked mailing method that includes verification of delivery.

#### **IV. Reporting of Breaches Required by Contractor to County; Mitigation**

- a. Contractor shall report to County within one business day of discovery, to the County contact listed in this agreement by email or telephone as listed in the of unsecured PII, if that PII was, or is, reasonably believed to have been accessed or acquired by an unauthorized person, any suspected security incident, intrusion or unauthorized access, use or disclosure of PII in violation of this Agreement, or potential loss of confidential data affecting this Agreement.
- b. Contractor understands that State and Federal Law requires a breaching entity to notify individuals of a breach or unauthorized disclosure of their PII. Contractor shall ensure that said notifications shall comply with the requirements set forth in California Civil Code section 1798.29, and 42 U.S.C. section 17932, and its implementing regulations, including but not limited to, the requirement that the notifications be made without unreasonable delay and in no event later than sixty (60) calendar days.
- c. Contractor agrees to promptly mitigate, to the extent practicable, any harmful effect that is known to Contractor stemming from a use or disclosure of PII in violation of the requirements of this Agreement, including taking any action pertaining to such use or

disclosure required by applicable Federal and State laws and regulations.

#### **V. Permitted Uses and Disclosures of PII by Contractor**

Except as otherwise limited in this schedule, Contractor may use or disclose PII to perform functions, activities, or services for, or on behalf of, County as specified in the Agreement; provided that such use or disclosure would not violate the Privacy Rule if done by County.

#### **VI. Obligations of County**

- a. County shall provide Contractor with the notice of privacy practices that County produces in accordance with California Welfare and Institutions Code section 10850, as well as any changes to such notice.
- b. County shall notify Contractor of any changes in, or revocation of, permission by Individual to use or disclose PII, if such changes affect Contractor's permitted or required uses and disclosures.
- c. County shall notify Contractor of any restriction to the use or disclosure of PII that County has agreed to in accordance with California Welfare and Institutions Code section 10850.

#### **VII. Permissible Requests by County**

County shall not request Contractor to use or disclose PII in any manner that would not be permissible under the Privacy Rule if so requested by County, unless Contractor will use or disclose PII for, and if the Agreement provides for, data aggregation or management and administrative activities of Contractor.

#### **VIII. Duties Upon Termination of Agreement**

- a. Upon termination of the Agreement, for any reason, Contractor shall return or destroy all PII received from County, or created, maintained, or received by Contractor on behalf of County that Contractor still maintains in any form. This provision shall apply to PII that is in the possession of



subcontractors or agents of Contractor.  
Contractor shall retain no copies of the PII.

- b. In the event that Contractor determines that returning or destroying PII is infeasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon mutual Agreement of the Parties that return or destruction of PII is infeasible, Contractor shall extend the protections of the Agreement to such PII and limit further uses and disclosures of such PII to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such PII.

## **IX. Miscellaneous**

- a. **Regulatory References.** A reference in this Attachment to a section in the Personally Identifiable Information Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b. **Amendment.** The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and in accordance 45 CFR § 205.40, *et seq.* and California Welfare and Institutions Code section 10850.
- c. **Survival.** The respective rights and obligations of Contractor under this Attachment shall survive the termination of the Agreement unless and until the PII is destroyed or returned to the County.
- d. **Interpretation.** Any ambiguity in any provision in this Attachment shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.

**Reservation of Right to Monitor Activities.** County reserves the right to monitor the security policies and procedures of Contractor.