

LIMITED LICENSE AGREEMENT: DSS CARES

THIS LIMITED LICENSE AGREEMENT (“Limited License” or “Agreement”), is entered into by and between The City of Philadelphia as licensor (the “City” or “Licensor”), and Provider (“Provider “ or “Licensee”).

The City, through a third party vendor, has developed DSS CARES, a website intended to improve communications among certain City agencies and providers to increase the efficiency and quality of client services. Licensee is a provider that has contracted with the City to furnish health and/or social services to City residents. The City has requested that Provider participate and Provider has agreed to participate in DSS CARES in accordance with the terms of this Agreement.

1. **Definitions.** For purposes of this Limited License, the following terms shall have the following meanings:

a. **Authorized User:** any Individual to whom the City has issued and not revoked a User ID.

b. **Client:** any Individual to whom services are being rendered pursuant to the Contract, or to any other City contract for the furnishing of health or social services.

c. **Contract:** The “Contract” means the agreement of the Parties evidenced by the Contract Documents. References to this “Contract” shall mean this Contract as the same may be in effect at the time such reference becomes operative.

d. **Contract Documents** The “Contract Documents” means these General Provisions, the Provider Agreement, and any and all other documents or exhibits incorporated by reference in either the General Provisions or the Provider Agreement, including specifically, this License Agreement, and any and all Amendments to any of these documents.

e. **Employee:** any Individual who is or has been an agent, officer or employee of Provider at any time during the Term, and any independent contractor of Provider. A “Current Employee” is currently an agent, officer, employee or independent contractor of Provider.

f. **Individual:** an “individual” as defined in 45 CFR § 164.501 or who qualifies as a personal representative in accordance with 45 CFR § 164.502(g), as each may be amended.

g. **DSS CARES:** the web based client information system by that name developed by the City including all databases, datasets and any software source code and object code that may be incorporated in or used to store, index, or display such data. DSS CARES permits the City, Provider, and others to access and share certain basic information about Clients when Clients have authorized them to do so or when the law otherwise so permits. DSS CARES currently includes the information categories described in Exhibit 1 hereto. The City or the DSS CARES Administrator will notify Provider of any changes to these categories.

h. **DSS CARES Administrator:** The third party, if any, retained by the City to manage and administer DSS CARES, or the City, if the City has not retained such a manager. The current DSS CARES Administrator is Philadelphia Safe and Sound, a non-profit corporation.

- i. **License**: as defined in Section 3.a of this Limited License.
- j. **Licensed Data**: any and all data contained on DSS CARES, including personally identifiable social service information.
- k. **Licensed Use**: to perform Licensee’s contractual obligations to the City including the provision of comprehensive and efficient service planning, delivery and referrals to Clients served by Licensee pursuant to the Contract.
- l. **Privacy Rule**: the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Part 160 and Part 164, Subparts A and E, as they may be amended, promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996, as it may be amended (“HIPAA”).
- m. **Protected Health Information**: any “protected health information” as defined in 45 CFR § 164.501, as it may be amended, but only to the extent created or received by Provider from or on behalf of City or made a part of DSS CARES.
- n. **Required By Law**: “required by law” as defined in 45 CFR § 164.501, as it may be amended.
- o. **Secretary**: the Secretary of the United States Department of Health and Human Services or his/her designee.
- p. **Term, Initial Term, and Renewal Term**: as defined in Section 4 of this Limited License.
- q. **User Identification or User ID**: the alphanumeric code furnished by the City to an Authorized User for use in gaining access to DSS CARES.

2. **Ownership**. Provider acknowledges and agrees that the City possesses and retains all right, title, and interest (including, without limitation, all rights of authorship, copyright, patent, trade secret and trademark) that are granted under United States and international copyright, trademark, and patent laws, treaties and agreements, in DSS CARES, as defined and specified in Section 1 of this Limited License. Provider also agrees that it is responsible to the City as well as to the owner of any or all of the Licensed Data, to protect and maintain the integrity and confidentiality of the Licensed Data to which the Provider obtains access, including any and all copies and reproductions thereof, in whatever form or medium the Licensed Data and such copies and reproductions may exist or be maintained, whether electronic, microfilm, microfiche, digital, video, paper, or other tangible or intangible form or medium.

3. **Grant of License**.

a. **License**. The City hereby grants Licensee a personal, non-exclusive, non-transferable, revocable right (the “License”) to access DSS CARES and the Licensed Data for, but only for, the specific purpose of the Licensed Use. Notwithstanding the other terms of this Agreement, Provider may disclose Protected Health Information as permitted by applicable law for purposes of treatment, or as Required By Law.

b. **Employees**. Unless otherwise authorized by the City in writing, Licensee shall ensure that the use of the License is strictly limited to Current Employees with individual User IDs, who need access to DSS CARES and the Licensed Data for the Licensed Use. Provider may revoke the User ID of

any Employee or user at any time and terminate access of the Employee to DSS CARES and the Licensed Data.

c. Provider Responsibility. As conditions of the City granting this License, Licensee:

1. shall be fully responsible for the use by any Employee of DSS CARES and the Licensed Data, and shall take all measures necessary to ensure that each and every Employee who has had access to DSS CARES, or to any portion of the Licensed Data, shall strictly abide by the terms and conditions of this License Agreement and applicable laws governing confidentiality. Licensee shall notify the City forthwith of the failure of any Employee to abide strictly by the terms and conditions of this License Agreement and of applicable laws governing confidentiality. In no event shall any action of the Licensee or any Employee relieve Licensee of any obligation under this License.

2. shall, subject to the City's approval, determine which of its employees and officers need and shall have access to DSS CARES, or to any portion of the Licensed Data. Licensee shall furnish to the City accurate and current records of Employees whom Licensee has proposed for authorization to use DSS CARES or any portion of the Licensed Data. The City and Licensee may, each in its sole discretion, exclude any Employee from access to DSS CARES, or to any portion of the Licensed Data.

3. shall notify the City of any Employee that ceases to be an employee or officer of Licensee, and shall revoke any authorization for such Employee.

d. Limited Transfer of Rights. This Limited License does not constitute a sale, or any other transfer of any right, title or interest in DSS CARES or the Licensed Data that is not expressly granted to Licensee by this Limited License, and the City reserves all rights in DSS CARES that are not expressly granted to Licensee by this Limited License. Nothing contained in this grant of license or elsewhere in this Limited License shall confer or be construed to confer on licensee any rights to software or data that are proprietary to parties other than the City, and all uses of such software by Licensee are subject to the license terms and terms of use of their owners.

e. Grant of User Identifications. The City hereby grants Licensee a personal, non-exclusive, non-transferable, revocable right to use the User Identifications in a manner consistent with the Licensed Use.

1. The number of User IDs provided to Licensee will be determined by the City.
2. City will assign User IDs to specific Authorized Users.
3. City will provide training to all Authorized Users.
4. Authorized Users shall not share, transfer or disclose the User ID to any other person.

4. Term of License. The initial term of this Limited License shall commence on the date of its execution by both parties, and shall terminate on upon the expiration or termination of the Contract, unless earlier terminated in accordance with its terms. This Limited License shall run concurrent with the term of the Contract, including any Additional Term thereof, and shall terminate or expire upon termination or expiration of the Contract, subject to the provisions of Section 12.i. Provider may terminate this Limited License, subject to the provisions of Section 12.i, by giving notice to the City within thirty (30) days of notice of any significant change pursuant to Section 1.f.

5. Restrictions on Use. Use of the DSS CARES system, the Licensed Data and the User IDs is strictly limited to the Licensed Use. Except as may be expressly set forth in Section 3, *Grant of License*, Licensee (a) shall not modify or manipulate DSS CARES or the Licensed Data by means of any computer software program or otherwise; (b) shall not incorporate DSS CARES or the Licensed Data in any computer database or combine it with other data; (c) shall not convert the Licensed Data to digital or other electronic form if it has been furnished in paper, video, or other non-digital form; (d) shall not, and shall not attempt to, decompile, reverse engineer, disassemble, modify, or, by any means derive the structure of DSS CARES or of any software code (source code or object code) that comprises or is furnished with DSS CARES or the Licensed Data; (e) shall not copy, reproduce, download, store, transcribe, imitate or simulate DSS CARES or the Licensed Data, in whole or in part, electronically or otherwise; (f) shall not publish, sell, assign, lease, sublicense, market, or transfer or purport to transfer any interest in DSS CARES, User Identification, and Licensed Data to any party; (g) shall not in any way use DSS CARES or the Licensed Data in any form of revenue generating or profit-making activity, or otherwise for Licensee's business or financial gain, including, but not limited to, use in any proposal, demonstration, or other solicitation of work; (h) shall not, without the written permission of the City's Chief Information Officer ("CIO"), publish, display, transmit, or in any way present the Licensed Data or any part thereof on, or transmit the Licensed Data over, the Internet or any intranet, extranet, or other public or private computer network, for any purpose other than carrying out the Licensed Use.

6. Nondisclosure. Licensee, its Employees, agents, subcontractors, consultants, and any person or entity acting on its behalf (i) will maintain in strict confidentiality all of the Licensed Data and all Protected Health Information at all times; (ii) will not (a) disclose without the City's consent, which is pursuant to the client's written consent (such consent may previously have been obtained and contained within DSS CARES), any Protected Health Information, or (b) pursuant to applicable law, divulge, disclose, communicate, or distribute any of the Protected Health Information to any person other than its employees and officers, and to them only for the purpose of carrying out the Licensed Use; (iii) will not furnish, distribute, transmit, or provide User IDs or access to the Licensed Data to any contractor or consultant of Licensee, or to any party whatsoever other than Licensee's Current Employees.

7. Confidentiality of Protected Health Information. Pursuant to the Privacy Rule, the following provisions govern the use and disclosure of Protected Health Information.

a. Obligations and Activities of Provider

1. Provider agrees not to use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.

2. Provider agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

3. Provider agrees to mitigate, to the extent practicable, any harmful effect that is known to Provider of a use or disclosure of Protected Health Information by Provider in violation of the requirements of this Agreement.

4. Provider agrees to report to the Responsible Official, as defined in the Contract, any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware within two (2) days after discovering such use or disclosure.

5. Provider agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Provider on behalf of City

agrees to the same restrictions and conditions that apply through this Agreement to Provider with respect to such information.

6. Provider agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from the City, or created or received by Provider on behalf of the City, available to the City, or to the Secretary, in a time and manner designated by the Responsible Official or designated by the Secretary, for purposes of enabling the Secretary or the City to determine the City's compliance with the Privacy Rule.

7. Provider agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for City to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

8. Provider agrees to provide to City or an Individual, within 15 business days, information collected in accordance with this Agreement, to permit City to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

9. Except as otherwise limited in this Agreement, Provider may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the City as specified in the Contract, provided that such use or disclosure does not violate the Privacy Rule and would not violate the Privacy Rule if done by City.

10. Except as otherwise limited in this Agreement, Provider may use Protected Health Information to provide Data Aggregation services to City as permitted by 45 CFR § 164.504(e)(2)(i)(B).

b. Obligations of the City.

1. City shall notify Provider of any limitation(s) set forth in any notice of privacy practices set forth by the City in accordance with 45 CFR § 164.520, to the extent that in the City's judgment such limitation may affect Provider's use or disclosure of Protected Health Information.

2. City shall notify Provider of any changes in, or revocation of, permission by any Individual to use or disclose Protected Health Information, to the extent that such changes may affect Provider's use or disclosure of Protected Health Information.

3. City shall notify Provider of any restriction on the use or disclosure of Protected Health Information that City has agreed to with any individual in accordance with 45 CFR § 164.522, to the extent that such restriction may in the City's sole judgement affect Provider's use or disclosure of Protected Health Information.

4. City shall not require Provider to use or disclose Protected Health Information in any manner that would not be a permissible use or disclosure by the City under the Privacy Rule.

8. Termination. Subject to applicable law, upon termination of this Agreement for any reason, if feasible, Provider shall return or destroy all Licensed Data and Protected Health Information received from City, or created or received by Provider on behalf of City. This provision shall apply to Licensed Data and Protected Health Information that is in the possession of subcontractors or agents of Provider. If such return or destruction is not feasible, Provider shall extend the protections of the Agreement to the

information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible. With respect to Licensed Data, Provider may keep such Licensed Data with the written consent of the City.

9. Warranties Disclaimed. **THE CITY FURNISHES DSS CARES, THE LICENSED DATA AND EACH PART AND ELEMENT THEREOF ON AN “AS IS” AND “WITH ALL FAULTS” BASIS. THE CITY MAKES, AND LICENSEE AND ITS EMPLOYEES RECEIVE, NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE LICENSED DATA OR ANY PART OR ELEMENT THEREOF, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OR REPRESENTATION THAT IT IS ACCURATE, COMPLETE, OR CURRENT; THAT IT IS FREE FROM SOFTWARE OR OTHER DEFECTS OR ERRORS, INCLUDING BUT NOT LIMITED TO, VIRUSES, WORMS OR OTHER HARMFUL COMPONENTS; OR THAT IT WILL MEET LICENSEE’S NEEDS OR EXPECTATIONS. ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED. LICENSEE ACKNOWLEDGES AND AGREES THAT IT ASSUMES THE ENTIRE RISK OF ANY LOSS TO ITSELF, ITS EMPLOYEES OR TO OTHERS RESULTING FROM ITS USE OF OR RELIANCE ON THE LICENSED DATA OR ANY ELEMENT OR PART THEREOF. NO ORAL OR WRITTEN ADVICE OR INFORMATION PROVIDED BY THE CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES SHALL CREATE ANY WARRANTY OF THE LICENSED DATA OR ANY PART OR ELEMENT THEREOF, OR IN ANY WAY INCREASE THE SCOPE OF THIS SECTION 9, AND LICENSEE AND ITS EMPLOYEES SHALL NOT BE ENTITLED TO RELY ON ANY SUCH ADVICE OR INFORMATION.**

10. City Liability Disclaimed. **IN NO EVENT SHALL THE CITY BE LIABLE TO LICENSEE OR TO ANY OTHER PARTY FOR ANY DAMAGES, CLAIM OR LOSS OF ANY KIND (COLLECTIVELY, “DAMAGES”) INCURRED OR CAUSED BY LICENSEE (INCLUDING, BUT NOT LIMITED TO, ANY COMPENSATORY, DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, LOST PROFITS, LOST SALES OR BUSINESS, EXPENDITURES, INVESTMENTS, OR COMMITMENTS IN CONNECTION WITH ANY BUSINESS, LOSS OF GOODWILL, OR OTHER DAMAGES RESULTING FROM LICENSEE’S USE OF DSS CARES, OR THE LICENSED DATA, OR FROM LICENSEE’S LOADING OR PROCESSING OR OTHERWISE USING DSS CARES, OR THE LICENSED DATA ON ANY COMPUTER SYSTEM OF LICENSEE OR OTHERS, INCLUDING, BUT NOT LIMITED TO, ANY DATA LOSS OR INABILITY TO USE DATA RESULTING FROM SUCH LOADING OR PROCESSING OR OTHERWISE USING DSS CARES, OR THE LICENSED DATA ON SUCH COMPUTER SYSTEM), IRRESPECTIVE OF WHETHER LICENSOR HAS BEEN INFORMED OF, KNEW OF, OR SHOULD HAVE KNOWN OF THE LIKELIHOOD OF SUCH DAMAGES. THIS DISCLAIMER OF LIABILITY APPLIES TO ALL CAUSES OF ACTION, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION, AND OTHER TORTS. IF THE CITY’S LIMITED WARRANTY SET FORTH IN SECTION 9, *WARRANTIES DISCLAIMED*, OR THE DISCLAIMER OF LIABILITY SET FORTH IN THIS SECTION 10 SHALL FOR ANY REASON WHATSOEVER BE HELD UNENFORCEABLE OR INAPPLICABLE, LICENSEE AGREES THAT THE CITY’S LIABILITY SHALL NOT EXCEED ONE HUNDRED DOLLARS (\$100.00).**

11. Indemnification. Licensee shall protect, defend, indemnify and hold City harmless from any and all claims, demands, liabilities, obligations, damages, suits, judgments or settlements, including but not limited to those related to patent, copyright, trademark, or service mark infringement, or violation of trade secrets, and including reasonable costs and attorneys’ fees (collectively, “Claims”), that arise from (a) the improper act, neglect, omission or unperformed obligation of Licensee and/or of Licensee’s Employees or consultants in relation to DSS CARES, or the Licensed Data or to Licensee’s use of DSS CARES or the Licensed Data; (b) Licensee’s breach of any provision of this Agreement; (c) any and all claims, demands, liabilities, obligations, damages, suits, judgments or settlements brought by or on behalf of Employees against the City arising from this Agreement and/or use of DSS CARES or the Licensed Data.

12. Miscellaneous Provisions.

a. Consideration. The parties acknowledge and agree that each party's entry into this Agreement and undertaking of its respective obligations pursuant thereto constitutes good and sufficient consideration for the other party's entry into this Agreement.

b. Assignment. Licensee shall not assign or otherwise transfer any of its rights or obligations under this Limited License.

c. Remedies. In addition to, and not in lieu of, any other remedies that may be available to the City under this Limited License, at law, or in equity, none of which are waived, in the event of any actual or threatened breach of this Limited License by Licensee, the City may but shall not be obligated to exercise any one or more of the following remedies:

1. Permit Provider to cure the breach or end the violation and terminate this Agreement if Provider does not cure the breach or end the violation within the time specified by City.

2. Immediately terminate this Agreement if Provider has breached a term of this Agreement and cure is not possible.

3. If neither termination nor cure is feasible, and the disclosure may violate HIPAA, the City shall report the violation as Required By Law of a breach involving Protected Health Information to the Secretary.

4. Obtain a restraining order, preliminary injunction or any other appropriate relief so as to specifically enforce the terms of this Limited License. Licensee acknowledges and agrees that a breach of this Limited License would cause the City injury not compensable in monetary damages alone, and that the remedies provided in the foregoing sentence are appropriate and reasonable.

5. Terminate any user's access to DSS CARES, User Ids, and the Licensed Data.

d. Governing Law; Forum Selection; Consent to Jurisdiction. This Limited License and all disputes arising under it shall be governed, construed and decided in accordance with the laws of the Commonwealth of Pennsylvania, federal law, and to the extent applicable, the Privacy Rule. The parties agree that any lawsuit, action, claim, or legal proceeding involving, directly or indirectly, any matter arising out of or related to this Limited License, or the relationship created or evidenced thereby, shall be brought exclusively in the United States District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Philadelphia County. It is the express intent of the parties that jurisdiction over any lawsuit, action, claim, or legal proceeding shall lie exclusively in either of these two forums. The parties further agree not to raise any objection to any lawsuit, action, claim, or legal proceeding, which is brought in either of these two forums and the parties expressly consent to the jurisdiction and venue of these two forums. The parties further agree that service of original process in any such lawsuit, action, claim, or legal proceeding may be duly effected by mailing a copy thereof, by certified mail, postage prepaid to the addresses specified in Paragraph f below ("Notice").

e. Severability. The provisions of this Limited License shall be severable. If any provision of this Limited License or the application thereof for any reason or circumstances shall to any extent be held to be invalid or unenforceable, the remaining provisions of the Limited License or the application of such provision to persons or entities other than those as to which it is held invalid or unenforceable, shall

not be affected thereby, and each provision of the Limited License shall be valid and enforceable to the fullest extent permitted by law.

f. Headings. The headings in this Limited License do not in any way define, limit, describe or amplify the provisions of the Limited License or the scope or intent of the provisions, and are not a part of the Limited License.

g. No Third Party Beneficiaries. Nothing in this Limited License, express or implied, is intended or shall be construed to confer upon or give to any person, firm, corporation, or legal entity, other than Licensee and Licensor, any rights, remedies, or other benefits under or by reason of the Limited License.

h. Survival. Any and all provisions set forth in this Limited License which, by its or their nature, would reasonably be expected to be performed after the termination or expiration of the Limited License shall survive and be enforceable after such termination. In addition to and not in lieu of the foregoing sentence, Licensee specifically agrees that the following shall survive the expiration or termination of the Limited License: any and all liabilities, actual or contingent, which shall have arisen in connection with the Limited License; and the terms and conditions set forth in Section 2, *Ownership*; Section 3, *Grant of License* (except for the grant of the License); Section 5, *Restrictions on Use*; Section 6 *Nondisclosure*; Section 7 *Confidentiality of Protected Health Information*; Section 9, *Warranties Disclaimed*; Section 10, *City Liability Disclaimed*; Section 11, *Indemnification*; Section 12.c., *Remedies*; and Section 12.d., *Governing Law; Forum Selection; Consent to Jurisdiction*.

i. Amendments; Waiver. This Limited License may not be changed, amended, augmented, rescinded, or discharged (other than by performance), in whole or in part, except by a written Amendment signed by both Licensor and Licensee. Except to the extent that Licensor and Licensee may otherwise agree in writing, no waiver of any provision of the Limited License shall be deemed: (a) to be a waiver of any other provision in the Limited License; or (b) to be a waiver of any breach of the obligations under the Limited License. Any forbearance by a party in seeking a remedy for any noncompliance or breach by the other party shall not be deemed to be a waiver of rights and remedies with respect to such noncompliance or breach.

j. Entire Agreement. This Limited License and the Contract (as defined in Section 1.c above) contain all the terms and conditions agreed upon by Licensor and Licensee with respect to the subject matter of the Limited License, and no other contract or agreement, oral or otherwise, regarding the subject matter of the Limited License shall be deemed to exist or to bind any party hereto or to vary any of the terms contained in the Limited License.

EXHIBIT 1
DSS CARES INFORMATION CATEGORIES

1. Name (first, middle, last)
2. Name Aliases (first, middle, last)
3. Social Security Number
4. Date of Birth
5. Gender
6. Address with start and end date
7. Phone
8. Race
9. Marital Status
10. Ethnicity
11. Veteran status
12. Primary Language
13. Education level
14. Employment status
15. Agency providing service
16. Case status (open and close dates)
17. Social workers, case managers, etc. working with client (including email,
18. phone number, employer)
19. Relations / family makeup
20. DSS CARES Combined Consent status
21. Service, intake, discharge, and consent related alert notification (specifically date of event,
related agency and social workers, case managers, etc. contact information)