

HOSTED SOFTWARE SERVICE AGREEMENT

This Software Service Agreement (the “Agreement”) is made as of the date of execution (the “Effective Date”) by and between Public Health Management Corporation, with offices at 1500 Market Street, LM 500, Philadelphia, PA 19102 (“PHMC”) and Madison County Adult Drug Court, with offices at 128 W. North Street, Canton, MS 39046, its agents, employees and contractors, collectively (“Licensee”), each a “Party” and collectively the “Parties”. The Agreement sets forth the terms under which PHMC will provide Licensee with access to and use of certain Software offering(s) identified in *Exhibit A (“Software Terms-of-Use”)*, (each a “Software Service” and collectively, the “Software Service”).

This Agreement, together with all Exhibits attached hereto, forms a binding contract between Licensee and PHMC. In addition, Licensee agrees that unless explicitly stated otherwise, any updates or Enhancements to the Software Service(s) that are made available to Licensee, and/or any new Software Service(s) subsequently purchased by Licensee under an Amendment will be subject to this Agreement.

In consideration of the mutual obligations contained in this Agreement, and intending to be legally bound, the Parties agree as follows:

1. DEFINITIONS

- a. **“Affiliate”** as used herein shall mean any organization in which Licensee owns a controlling or majority interest, whether by direct ownership or by agreement, during any License year or acquires a controlling interest or majority interest, whether by direct ownership or by agreement, in such affiliate during a License year for as long as Licensee holds such controlling interest or majority ownership.
- b. **“Agreement”** as used herein shall mean these terms and conditions, together with any and all Amendments referencing these terms and conditions, the exhibits and schedules attached hereto and any other amendments, statements of work, attachments or appendices thereto, whether attached or incorporated by reference.
- c. **“Bug”** or **“Error”** as used herein shall mean an instance when the Software does not perform in accordance with the current Documentation.
- d. **“Documentation”** as used herein shall mean such manuals and other standard end-user Documentation that PHMC ordinarily makes available with the Software, including amendments and revisions thereto.
- e. **“Enhancements”** as used herein shall mean any modifications or improvements with respect to the functionality or performance of the Software, which is requested through an executed development amendment.
- f. **“Permitted Users”** as used herein shall mean the maximum number of individual users permitted to use the Software, whether at the Server location or by remote access. *Under no circumstances may the Software be operated at the same time on more than the number of computers for which a separate License fee has been paid to PHMC.*
- g. **“Professional Services”** as used herein shall mean any additional services NOT in relation to functionality or performance of the Software. Additional services are to be fully described in a negotiated and executed development amendment. Professional Services are more specifically detailed in Section 4 “Professional Services”
- h. **“Server”** as used herein shall mean the Server at PHMC, a single website hosted by PHMC, or a hosting company approved by PHMC.
- i. **“Software”** or **“Software Services”** as used herein shall mean one of PHMC’s Software Suites, as modified for Licensee by PHMC, as described in *Exhibit A (“Software Terms-of-Use”)* hereto, and includes program object code as well as systems and operations Documentation in their standard Versions and as customized for Licensee by PHMC.

- j. “**Software License**” or “**License**” as used herein shall mean the License to use the Software granted to Licensee pursuant to the Agreement.
- k. “**Version**” as used herein shall mean a Version of the Software which contains Enhancements, which PHMC may provide for the Software pursuant to an approved and funded statement of work.

2. LICENSE

- a. Software License. Subject to the terms and conditions set forth herein, PHMC hereby grants to Licensee and its Affiliates, a limited, non-exclusive, non-transferable, worldwide renewable annual License to use the Software identified on **Exhibit A** during the Term of the Agreement as set forth in Section 8 “License Term” and pursuant to the terms and conditions of this Agreement subject to timely payment of the Software License and Maintenance and Support Fees.
 - i. Licensee agrees that the Software will only be used, on computers located at the Server location(s) set forth in **Exhibit A**. Subject to the terms of this Agreement, Licensee shall have the right to use the Software in the version set forth on Schedule A for Licensee's internal business purposes, provided, however, that Licensee's use does not at any time exceed the number of Permitted Users as set forth on **Exhibit A**. Licensee agrees to prevent any persons other than approved employees of Licensee from using or having access to any part of the Software.
 - ii. No part of the Software Service may be copied, reproduced, distributed, republished, displayed, posted or transmitted in any form or by any means. Licensee agrees not to access the Software Service by any means other than through the interfaces that are provided by PHMC. Licensee shall not do any "mirroring" or "framing" of any part of the Software Service, or create Internet links to the Software Service which include log-in information, user names, passwords, and/or secure cookies. Licensee shall be responsible for its Users' use of the Software Service, including Licensee's contractors and agents, and Licensee's Affiliates, regarding compliance with this Agreement.
 - iii. Licensee is responsible for all activities conducted by its Users and for its Users' compliance with this Agreement, including the content of all Licensee Data. Licensee and its Users will comply with all applicable local, state, federal, and foreign laws, treaties, regulations, and conventions in connection with its use of the Software Service, including without limitation those related to privacy, electronic communications and anti-spam legislation. Licensee will not
 - 1. Introduce into or transmit through the Software Service any virus, worm, trap door, back door, and other harmful or malicious code, files, scripts, agents, or programs;
 - 2. Transmit or store infringing material in the Software Service;
 - 3. Send any Electronic Communication from the Software Service that is unlawful, harassing, libelous, defamatory or threatening.
 - iv. Any changes, additions, and enhancements in the form of new or partial programs or documentation as may be provided by PHMC under the maintenance and support services shall remain the proprietary property of PHMC.

3. DATA

- a. Security. PHMC shall maintain commercially reasonable administrative, physical and technical safeguards for the protection, confidentiality and integrity of Licensee Data.
 - i. No Virus Warranty. PHMC warrants that the Software will be free of viruses, Trojan horses, worms, spyware, or other such malicious code ("Malicious Code")
 - ii. Any Malicious Code contained in Licensee-uploaded attachments or otherwise originating from Licensee or its Users is not covered by any PHMC warranty. Any services required from PHMC to remediate issues caused by Licensee data will be billed at current PHMC rates documented in **Schedule A- “Licensing and Maintenance Fees”**.

- b. Software Ownership. Licensee acknowledges and agrees that, as between Licensee and PHMC, all rights, titles and interests in the Software and any part or derivation thereof, including, without limitation, all rights to patent, copyright, trademark, trade name and trade secrets and all other intellectual property rights therein and thereto, and all copies thereof, in whatever form, including any written Documentation and all other material describing such Software, shall at all times remain solely with PHMC.
- c. Data Ownership. All data entered and stored in the Software database by Licensee is the property of Licensee. Licensee understands and grants PHMC access to data collected by Licensee for the purpose of making any necessary system modifications, to provide technical support, generate descriptive reports, and to manage and maintain a repository of data that can be used to evaluate programs and policies. PHMC agrees to take all reasonable efforts to safeguard the data and protect the identity of persons entered into the database. PHMC agrees to comply with all state and federal statutes and regulations and contractual conditions with regard to the protection of client confidentiality.
- d. Documentation. All executable programs, and all programming Documentation relating thereto, including specifications developed by PHMC under any SOW, shall be the property of PHMC provided, however, PHMC grants Licensee the limited right to use such programs and Documentation in accordance with this Agreement. PHMC may use without restriction any and all ideas, concepts, methods, know-how, or techniques related to the programming and processing of data discovered or developed by PHMC during the performance of Professional Services under any SOW.
- e. All Rights Reserved. All rights not expressly granted to Licensee are hereby reserved to PHMC. Licensee agrees and acknowledges that the Software is valuable, confidential and intellectual property belonging solely to PHMC, and that Licensee has not purchased or been sold or granted any interest in the Software except as expressly provided herein.
- f. Intellectual Property. Neither Party is granted any right or interest to the logos, copyrights, trademarks, marks, trade names or trade secrets (the "Intellectual Property") of the other Party. Neither Party may use the other Party's Intellectual Property without the express written consent of such Party.

4. PROFESSIONAL SERVICES

- a. Professional Services Provided by PHMC. Professional Services included in the License Fee for the Software are outlined in Schedule B.
- b. Professional Services Requested by Licensee. Licensee may from time to time request, in writing and in sufficient detail, additional Professional Services to be performed by PHMC. Professional Services that are not included in the License Fee for the Software may be provided by PHMC at the then-current rates. Professional Services may include installation and demonstration of additional software, implementation services, education and training and customization services, all as more fully described in a negotiated and executed development amendment including a Statement of Work.
 - i. PHMC will prepare a Statement of Work, containing, among other provisions, a description of the Professional Services to be performed and an estimate of the personnel services effort, processing charges, and other related costs. A Statement of Work shall become binding upon execution of the Statement of Work by Licensee and PHMC. All such Professional Services shall be subject to the terms and conditions of this Agreement.
- c. Prepaid services must be utilized within one (1) year from the date of prepayment.
- d. Unless otherwise set forth on a particular Statement of Work with respect to Professional Services performed on a fixed fee basis, all services performed hereunder will be billed on a time and materials basis, plus reasonable out of pocket expenses incurred by PHMC to be reimbursed to PHMC as provided under Section 7 hereof.

5. MAINTENANCE AND SUPPORT SERVICES

a. Licensee's Role:

- i. Licensee will be responsible for accessing the Software on its PCs and networks;
- ii. Licensee will provide the first line of user support (Licensee's helpdesk and training staff); identifying Licensee contacts to evaluate questions and problems, before engaging PHMC's support services;
- iii. The only data Licensee will be able to access is data that is entered into the Software. The Software does not provide backward compatibility to data entered into previous Version(s) of the Software;
- iv. Licensee agrees to promptly inform PHMC in writing of any programming error in the Software that requires correction, together with such supporting file/record dumps and output reports/copies of screen displays as may be necessary or reasonably requested by PHMC to examine and trace the programming error.
- v. Licensee agrees to identify a primary contact representing their organization. This individual, or their supervisor, or explicitly designated technical staff for a given SOW, is the person who will contact PHMC's CSR. All communication will occur between PHMC's CSR and this individual. This individual should be intimately familiar with the Software, as well as the original specifications. Licensee will identify a secondary, backup contact in case the primary contact is unavailable.
- vi. Licensee agrees to contact PHMC's CSR via e-mail to initiate support and maintenance activities describing the identified problem in extensive detail as outlined in *Section 5.b.ii*. PHMC staff will then respond to Licensee's identified representative via telephone or e-mail following the escalation procedures detailed within *Exhibit A*.
- vii. Accompanying receipt of an e-mail for service work from Licensee's identified representative to PHMC's CSR signed by an authorized representative of Licensee, PHMC will review the SOW containing a description of the Professional Services to be performed. A SOW shall become binding upon execution of the SOW by authorized representatives of Licensee and PHMC, and will be forwarded to the Licensee identified representative via e-mail and incorporated herein by reference.
- viii. On request, Licensee agrees to promptly provide PHMC with sufficient support and test time on Licensee's computer system to duplicate the error, confirm that the error is with the Software, and to confirm that the error has been fixed.
- ix. Licensee shall bear the cost of error identification and correction, if any, at the then-current rates, plus any out-of-pocket expenses, if after investigation by PHMC, PHMC determines that such error occurred as a result of one of the reasons listed above.

b. PHMC's Role: Maintenance and Support. During the term of this Agreement and provided Licensee's Maintenance and Support Fee (If Applicable) has been timely paid, PHMC shall:

- i. Supply Licensee with any improvements or modifications to the Software that PHMC does not charge for as options or as separate products.

- ii. Provide off-site communications such as telephone, facsimile and e-mail support between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday (excluding PHMC holidays), Eastern Time, to the extent technically feasible to cause the Software to perform substantially in accordance with the documentation provided to Licensee therewith. Any required correction, replacement or services will be promptly accomplished after Licensee has identified and notified of any such error in accordance with the procedures, which are attached hereto within Exhibit A. For purposes of providing the maintenance and support services, PHMC agrees to implement the Procedures attached hereto within Exhibit A and incorporated herein by reference. If Licensee specifically requests PHMC to visit Licensee's site in connection with the correction of one or more errors not covered by PHMC's maintenance and support services, Licensee shall reimburse PHMC for all out of pocket expenses incurred in connection therewith as described in *Schedule A*.
 - iii. The Software is certified by PHMC to run with current Versions of Microsoft Internet Explorer Version 6.0 or greater.
 - iv. In the event, changes occur to Microsoft Internet Explorer version 6.0 or greater subsequent to Acceptance, other than as a result of a Bug or Error in the Software, PHMC will use best efforts to fix the Software so that it becomes fully compatible with the then-current Versions of Microsoft Internet Explorer at PHMC's then current hourly rates. Updates do not include platform extensions to different hardware platforms or different operating system platforms.
 - v. Maintenance and Support Services will be provided for the then-current release of the Software as specified by PHMC.
- c. PHMC's Role: Professional Services.
- i. One complete set of end-user Documentation, available for download within the software. Additional end-user Documentation may be requested from PHMC Client Service Representative.
 - ii. Training Sessions at PHMC's then-current rates may be scheduled when requested in writing by Licensee and subject to PHMC's availability of training resources.
 - iii. Upon acceptance of a "*Service Enhancement - Statement of Work*", PHMC and Licensee recognize that PHMC agrees to use reasonable efforts and timeframe to develop and implement solutions to stated Professional Services, should the need arise.
- d. PHMC's Role: Functionality Enhancements to Software.
- i. Upon acceptance of an "*Service Enhancement Statement of Work*", Licensee recognizes that its Version of the Software is not the "standard" Version of the Software offered for use on a subscription basis. Software changes made in the delivered product at Licensee's request will disqualify it from any updates PHMC may make available to users of its standard Software.
 - 1. Where Enhancements, Versions or revisions affect program modules shared in common with other users of the Software, Licensee may request in writing to receive the updates at the cost necessary to make the Enhancements, Versions or revisions compatible with the Software.

6. PAYMENTS

- a. Licensing Fees. Upon execution of this Agreement, Licensee shall pay PHMC the License fee for the Software identified on *Exhibit A* and outlined in *Schedule A* (the "License Fee"). If Licensee and PHMC amend this agreement to include additional Software, Licensee shall pay PHMC such additional License fees as may be agreed to by the Parties at such time.

- i. The License Fees, pursuant to the services outlined in **Schedule A**, are \$1,100, assuming up to five (5) users per court, per year. This fixed fee does not provide for any additional services unless specifically outlined in **Exhibit A**.
- ii. **Maintenance and Support Fees.** Upon execution of this Agreement, Licensee shall pay, in advance, the Maintenance and Support Fee for the Software identified on **Exhibit A**. Additionally, Licensee agrees to pay PHMC, at the rates specified in **Schedule A** for time spent and expenses incurred if analysis and maintenance of a problem indicates it was not the result of a nonconformance in the Software with the Documentation provided to Licensee therewith or if:
 1. The Software has been modified, changed or altered by anyone other than PHMC unless authorized by PHMC in writing;
 2. The computer hardware used in the operation of the Software is not in good operating order or is not installed in a suitable operating environment;
 3. The failure to perform substantially in accordance with the standard Documentation is caused by Licensee or its agents, servants, employees or contractors (including, without limitation, by Licensee's failure to follow all instructions contained in such standard Documentation); or
 4. Licensee fails to notify PHMC promptly, in writing, of such failure after it is discovered. These charges will be invoiced at PHMC's then-current rates plus reasonable out of pocket expenses. PHMC shall have no duty to provide error identification or correction if all sums then due to PHMC under this Agreement have not been paid or Licensee is otherwise in material breach of its obligations under this Agreement.
- iii. **Taxes.** Licensee shall be responsible for all use, sales, excise, transfer, ad valorem and other taxes, tariffs and duties (except for taxes on PHMC income), or any other tax or fee in lieu thereof imposed by any government or governmental agency or authority, associated with the License or use of the Software, or associated with any services provided by PHMC hereunder.
- iv. **Expenses.** Licensee agrees to reimburse PHMC for any reasonable or requested out-of-pocket expenses incurred by PHMC in connection with the performance of any services under this Agreement or any SOW, including without limitation, travel to and from Licensee's site, lodging, meals, telephone, shipping and any other expenses incurred at the specific request of Licensee or with Licensee's Agreement.
- v. **Form and Time of Payment.** All payments due from Licensee to PHMC shall be payable in United States currency. Unless otherwise specified in this Agreement all amounts shall be paid by Licensee to PHMC within thirty (30) days of receipt of an invoice from PHMC. Any sums not paid when due may accrue interest at a rate equal to the lesser of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law. Licensee will also be responsible for all costs of collection including reasonable attorneys' fees and expenses. Payments will be applied first to accrued and unpaid interest and second any remaining amounts will be applied to the outstanding fees, expenses and the costs.

7. LICENSE TERM

- a. The initial Term of this Agreement shall be for a period of one (1) year commencing on 9/01/2021 and continue until 8/31/2022, at which point the Agreement will automatically renew for subsequent terms of one (1) year (each such extension or renewal, a "Renewal Term").
- b. Licensee may, at least thirty (30) days before the end of a Term, inform PHMC that Licensee does not intend to renew, or wishes to cancel the Agreement.
- c. PHMC may modify the prices or fees for Services for each Renewal Term upon thirty (30) days' notice to Licensee; *provided, however*, if Licensee does not agree to accept the new pricing, Licensee may terminate the affected Agreement without penalty within thirty (30) days of the date of such notice. Any continued use of the Software thirty (30) days after notice date shall be deemed

acceptance of the new pricing.

- d. Missed cancellation period: PHMC accepts no responsibility for late cancellations or cancellation requests not received due to printer or fax failure, download failure due to (and not limited to) disconnection from the Internet, power failure, heavy Internet traffic, instructions not received due to an incorrect customer information, illness, a cancellation request sent to a wrong email address or a company other than PHMC, computer failure, or hardware error. It is your responsibility to ensure that cancellation requests are received by PHMC within ninety (90) days of the Start Date, or at any other time.

8. TERMINATION

- a. Licensee shall have the right to terminate this Agreement in its entirety if:
 - i. Subject to a formal submission by the Licensee, **within ninety (90) days of the Start Date**, Licensee may receive a prorated refund based on the date of cancellation of any subscription fees already paid by Licensee, less a cancellation-processing fee of one-hundred dollars (U.S. \$100). Any Notice of Termination received after ninety (90) days shall NOT be eligible for refund.
 - ii. During any Renewal Period, upon receipt of Renewal Term Pricing, Licensee may terminate the affected Agreement without penalty within thirty (30) days of the date of such notice if Licensee does not agree to accept the new pricing.
- b. PHMC shall have the right to terminate this Agreement in its entirety if:
 - i. Licensee fails to pay any License fees or any other fees or sums that it is required to pay under this Agreement or any SOW or Statement of Work (a "Payment Default") and such failure is not corrected within fifteen (15) business days after PHMC gives written notice of such nonpayment to Licensee; or
 - ii. Other than a Payment Default, Either party may immediately terminate this Agreement and any applicable Amendments issued hereunder in the event the other party commits a material breach of any provision of this Agreement that is not cured within thirty (30) days of written notice from the non-breaching party. Such notice by the complaining party shall expressly state all of the reasons for the claimed material breach in sufficient detail so as to provide the alleged breaching party a meaningful opportunity to cure such alleged breach and shall be sent to the General Counsel of the alleged breaching party at the address listed in the heading of this Agreement (or such other address that may be provided pursuant to this Agreement) ("Notice"). Upon termination or expiration of this Agreement for any reason, Licensee shall have no rights to continue use of the Software. If this Agreement is terminated for any reason other than a termination as a result of PHMC's material breach of the Agreement, then PHMC shall be entitled to all of the Fees due under this Agreement for the entire Term. If this Agreement is terminated as a result of PHMC's material breach of this Agreement, then Licensee shall be entitled to a refund of the pro rata portion of any prepaid subscription fees paid by Licensee to PHMC under this Agreement for the remaining terminated portion of the Term.
- c. If the Software or related documentation is held by a court of competent jurisdiction or alleged to constitute such an infringement or violation of any third party's proprietary rights and Licensee's use thereof is or may reasonably be expected to be enjoined, PHMC shall, at its option, either secure for Licensee the right to continue to use such Software or documentation, or replace and modify such Software or documentation to make it non-infringing. If either option is not commercially reasonable, PHMC reserves the right to terminate the License and refund a pro rata share of the License Fee and maintenance and support fees.
- d. In no event shall any termination of this Agreement excuse either Party from any breach or violation of this Agreement and full legal and equitable remedies shall remain available therefor, nor shall it excuse Licensee from making any payment due under this Agreement with respect to any period prior to the date of termination.

- e. Subscription Termination: A subscription to any Service(s) may be terminated at any time, and without cause (as outlined above), upon notification by electronic or conventional mail, or by fax, if available.
 - i. By sending an email to PHMC at courttools@phmc.org
 - 1. Subject line "subscription cancellation request"
 - 2. Body of the email: the reason for cancellation.
 - ii. Upon delivery of a cancellation request email, you will receive a confirmation email from PHMC with a tracking number confirming that your message has been received. You should retain this confirmation for your records as this is confirmation of your cancellation request. If you do not receive a confirmation email for your request within twenty-four (24) hours, PHMC recommends that you submit your request again via an alternate method such as postal mail, or fax. Once your cancellation is processed by PHMC, you will receive, via email, a subscription cancellation confirmation. Should you not follow the correct cancellation instructions the account will remain active and you will be responsible for all charges incurred up to the time the subscription is deactivated.

9. LIMITED WARRANTY

- a. PHMC warrants that the Software will function in accordance with the documentation provided to Licensee therewith. PHMC further warrants that the professional services and the maintenance and support services provided hereunder will be performed in accordance with the standard of care generally applicable in the industry. If PHMC is notified of an error in the Software within ninety (90) days after delivery of the Software or is notified of a deficiency in the services within ninety (90) days of the performance of the services, PHMC shall provide the warranty services set forth in Section 10.a.
- b. EXCEPT AS SET FORTH ABOVE IN SECTION 11.1, PHMC MAKES NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES AND THE SOFTWARE, INCLUDING THE DOCUMENTATION, OR ANY UPDATES, ENHANCEMENTS OR RELEASES THERETO, OR ANY OTHER SERVICES OR GOODS PROVIDED BY PHMC TO LICENSEE IN CONNECTION WITH THE AGREEMENT, INCLUDING WITHOUT LIMITATION ANY EXPRESS OR IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE; OR CONDITION, QUALITY, DURABILITY OR PERFORMANCE.
- c. PHMC does not warrant that either the functional specifications or the functions contained or to be contained in the Software shall meet the Licensee's requirements or shall operate in the combination which Licensee selects for use, or that the operation or use of the Software shall be uninterrupted or error free. Licensee assumes the responsibility for the selection of the Software to achieve Licensee's intended results, and for the installation, use and results obtained from the Software.
- d. PHMC shall have no obligation in respect of any breach or warranty contained in Section 10 if Licensee fails to implement Software in accordance with documentation provided with Software, fault arises out of hardware related issues, or there have been any changes, additions or modifications made to the Software by Licensee.
- e. PHMC warrants that it has the right to license the Software on the terms and conditions of this Agreement, and that it knows of no claim by any third party that the use of the Software infringes the United States copyright, or the United States patent, of any third party. If any legal action is threatened or taken against the Licensee in respect of any of PHMC's intellectual property rights, including copyright, patent, or similar right in the Software and/or documentation provided with the Software, then Licensee shall immediately inform PHMC and permit PHMC to defend such action. PHMC may, at its expense, change, modify, or delete all, or any part of the Software in order to avoid any such infringement, or alleged infringement of copyright, patent, or misappropriation, but in doing so PHMC shall use reasonable efforts to avoid materially reducing the functionality or performance of the Software, or terminate the Agreement and refund a pro rata share of the license and maintenance and support fees paid.

10. LIMITATIONS ON REMEDIES; DISCLAIMER OF CONSEQUENTIAL DAMAGES

- a. In the case of a breach of the warranty concerning the Software as set forth in Section 10 above, Licensee's sole and exclusive remedy and PHMC's only obligation shall be to cause the Software to operate substantially in accordance with the applicable functional specifications as stated in the standard documentation. In the case of a breach of the warranty concerning the services as set forth in Section 6 above, Licensee's sole and exclusive remedy and PHMC's only obligation is to perform the services. In the case of an alleged breach of the Software warranty, Licensee must give PHMC written notice during the warranty period. In the case of an alleged breach of the services warranty, Licensee must give PHMC written notice within thirty (30) days after performance of the services or receipt of the deliverable resulting from the services, whichever is later.
- b. Neither PHMC nor any distributor, licensee or agent through whom Licensee obtained the Software shall be liable for any lost profits or any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever suffered or incurred by Licensee as a consequence of the use or performance of the Software, the documentation, the underlying algorithm or otherwise, even if PHMC has been advised of the possibility of such damages and whether or not any limitation on remedies is deemed to have failed in its essential purpose. In any event, under no circumstances shall PHMC be liable for any loss, cost, expense or damage to Licensee in an amount exceeding the current annual Software License Fee paid by Licensee to PHMC under this Agreement, whether arising as a result of:
 - i. Any breach of this Agreement by PHMC;
 - ii. Any act or failure to act by PHMC;
 - iii. PHMC's negligence or gross negligence;
 - iv. Any claim made against Licensee by any other party even if PHMC has been advised of the claim or potential claim. Licensee agrees that it shall not assert any claim(s) against PHMC based on any theory of strict liability.
- c. Licensee acknowledges that the Software is not intended for use by computer users in general but is intended for use only by business professionals and shall not in any form or manner substitute for the exercise of their professional or business judgment. Licensee agrees to bear full and exclusive responsibility and liability for the accuracy and appropriateness of the input and the use of the output of the Software by Licensee, Licensee's personnel, agents, clients and customers.
- d. The aggregate liability of PHMC to Licensee in respect to any and all causes of action at any time or times arising out of this Agreement, including without limitation any breach of warranty, shall not exceed an amount equal the current annual Software License Fee paid prior to the time when such cause of action arises, reduced by the portion of the year which shall have expired prior to that date.
- e. No action relating to this Agreement may be brought by either Party more than one (1) year after the Party concerned knows or, in the exercise of care reasonable under the circumstances, should have become aware of the facts constituting the cause of action.
- f. Notwithstanding the forgoing, PHMC in no event shall be liable for any claim under this Section which is based on: (a) Licensee's continued use of the Software after it has become aware of the existence of any claim or potential claim of the type referred to above or after it has been notified by of the existence of such a claim and has been requested to cease all use of the Software; (b) the use or combination of the Software with any other software or hardware not supplied to Licensee by PHMC; (c) any change, modification, addition or enhancement to or of the Software not made by or at the direction of PHMC; or (d) Licensee's use of any but the latest available (or the immediately prior) release of the Software. **THE FOREGOING STATES THE ENTIRE LIABILITY OF PHMC AND LICENSEE REGARDING INTELLECTUAL PROPERTY RIGHT CLAIMS BY THIRD PARTIES.**
- g. Licensee represents, warrants and covenants that: a) all of Licensee's activities relating to this Agreement, including but not limited to Licensee's use of the Software will not violate any applicable law, rule or regulation, and Licensee will obtain all consents, permits and approvals and

will enter into all agreements required to comply with such laws, rules and regulations; b) this Agreement constitutes a valid and binding obligation of Licensee, enforceable in accordance with its terms; and c) Licensee will not disclose or provide access to the Software to any third party and will not allow any third party to use the Software.

11. DISCLAIMER OF WARRANTIES

- a. LICENSEE EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF AND RELIANCE UPON THE SOFTWARE IS AT LICENSEE'S SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH LICENSEE. THE SOFTWARE IS PROVIDED "AS IS", WITH ALL FAULTS AND WITHOUT ANY REPRESENTATION, WARRANTY OR COVENANT OR ANY KIND.
- b. PHMC HEREBY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, COVENANTS AND CONDITIONS WITH RESPECT TO THE SOFTWARE, EXCEPT AS HEREIN PROVIDED, EITHER EXPRESS OR IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OR SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF TITLE, OF ACCURACY, OF COMPLETENESS, OF LEGALITY, OF QUIET ENJOYMENT AND NONINFRINGEMENT OF THIRD PARTY RIGHTS. WITHOUT LIMITING THE FOREGOING: A) PHMC DOES NOT REPRESENT, WARRANT OR COVENANT AGAINST INTERFERENCE WITH LICENSEE'S ENJOYMENT OF THE SOFTWARE, THAT THE FUNCTIONS PROVIDED BY THE SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS OR THAT ANY DATA OR REPORT SUBMITTED TO ANY AGENCY, GOVERNMENTAL OR OTHERWISE USING THE SOFTWARE WILL COMPLY WITH ALL APPLICABLE LAWS, REGULATIONS AND RULES; AND B) PHMC MAKES NO REPRESENTATION, WARRANTY OR COVENANT AS TO NONINFRINGEMENT AND RESERVES THE RIGHT TO TERMINATE THIS AGREEMENT IMMEDIATELY UPON ANY CLAIM BY A THIRD PARTY OF RIGHTS IN OR TO ANY INTELLECTUAL PROPERTY ASSOCIATED THEREWITH. NO ORAL OR WRITTEN STATEMENT SUPPLIED BY PHMC SHALL CREATE A WARRANTY.

12. HIPAA PRIVACY COMPLIANCE

- a. Because the work that the parties are engaged in, as part of this agreement, involves access to Protected Health Information as defined by the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Patient Protection and Affordable Care Act (ACA), Parties are required to sign a Business Associate Agreement (See *Exhibit C* attached) in order to address the privacy and security provisions set forth in the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), contained in Title XIII, Subtitle D, of the American Recovery and Reinvestment Act of 2009.

13. INDEMNIFICATION

- a. Licensee, at its expense, shall indemnify, defend and hold harmless PHMC, its affiliates and their respective officers, directors, employees, agents, representatives, and suppliers from any damages, liabilities, losses, injuries, death, costs (including but not limited to reasonable attorneys' fees and court costs), fees or expenses which arise, directly or indirectly, from or are alleged to have arisen, directly or indirectly, from; a) any act, omission, negligence, unlawful action or willful misconduct by Licensee or of any officer, director, employee, agent, representative or consultant working for Licensee (whether paid or unpaid) in connection with any activity relating to this Agreement, including but not limited to the use of the Software; b) any violation or breach by Licensee or any officer, director, employee, agent, representative or consultant of Licensee (whether paid or unpaid) of any term of this Agreement including but not limited to any representation, warranty or covenant, or of any law, regulation or rule governing any activity of Licensee relating to this Agreement; or c) any data provided by Licensee.
- b. PHMC, at its expense, shall indemnify, defend and hold harmless Licensee against any losses, costs and damages arising from a claim by a third party against Licensee that the Software, or any part thereof, infringe any intellectual property or proprietary rights of such third party or

misappropriates any protected trade secret of such third party. PHMC's obligations under this Section 14 are subject to Licensee providing PHMC with; a) prompt written notice of the claim, b) sole control over the defense or settlement (provided however, that any such settlement shall not result in financial liability on Licensee or require its admission of any fault without its prior written consent), and c) reasonable support and cooperation with regard to the defense.

- i. In the event that PHMC's right to provide the Services is enjoined or in PHMC's reasonable opinion is likely to be enjoined, PHMC may, at its expense, obtain the right to continue providing the Services, replace or modify the Services so that they become non-infringing but remain functionally equivalent, or if such remedies are not reasonably available, terminate this Agreement and refund to Licensee any amounts applicable to the Services enjoined; provided however, the refund of any amounts or termination of this Agreement shall not relieve PHMC of its indemnification, defense and hold harmless under this Agreement. This provision shall survive termination of this Agreement.

14. CONFIDENTIALITY

- a. Licensee will, and will direct its employees, officers, directors, members, managers, agents and affiliates to, keep the Software, including related documentation, and all information and materials concerning or related thereto secret and confidential at all times, to protect PHMC's proprietary rights therein, and not to disclose, disseminate or permit to be disclosed or disseminated any such information or materials to any person, except as expressly authorized hereunder to enable Licensee to carry out its obligations pursuant to this Agreement. Licensee will use the same degree of care to avoid disclosure or dissemination of any such confidential information as it employs with respect to its own information which it does not desire to have disclosed or disseminated.
- b. Protected Health Information. PHMC shall require Licensee to sign a separate Business Associate Agreement ("BAA") defining the Roles and Responsibilities of both the Covered Entity (Licensee) and the Business Associate (PHMC). BAAs shall remain in place for the life of the Agreement. The Licensee may be required to, at any point, sign a revised/updated BAA to remain HIPPA compliant.

15. NONSOLICITATION

- a. Each Party agrees that it will not, for the term of this Agreement and for a period of one (1) year after any termination hereof, directly or indirectly, cause, induce or attempt to cause or induce any of the other Party's employees or consultants to leave the employ of such Party or to accept employment or engagement with the other Party or any other employer, without the prior written consent of the other Party hereto. In the event that either Party breaches or attempts to breach any of the provisions of this Section, the non-breaching Party shall have the right, in addition to such other remedies which may be available to it, to injunctive relief enjoining such breach or attempt to breach, it being acknowledged that legal remedies are inadequate.

16. GOVERNING LAW AND JURISDICTION

- a. The laws of the state where Licensee's principal place of business is located shall govern all claims, regardless of conflict of laws principles, except that the Federal Arbitration Act governs all provisions relating to arbitration. Each Party irrevocably consents to the exclusive jurisdiction and venue of the state or federal courts in Philadelphia County, Pennsylvania, for all disputes arising out of or relating to these Terms or the Services that are heard in court (excluding arbitration and small claims court).
- b. The Software is subject to United States export laws and regulations. Licensee must comply with all domestic and international export laws and regulations that apply to the Software.

17. SUCCESSORS AND ASSIGNS

- a. Licensee shall not sublicense, sell, rent, lease, lend, give, assign or transfer the Software, Software License or any portion thereof, or create any derivative works based thereon without PHMC's prior written consent, which may be withheld in PHMC's sole discretion. Any such assignment or attempted assignment without such prior written consent shall constitute a breach and automatically terminate this Agreement. In such an event, all Fees shall be due to PHMC under this Agreement for the entire Term within thirty (30) days of notification of Termination from

PHMC.

18. NOTICES

- a. Addresses / Addressees. All notices, statements and other communications required or permitted under this Agreement shall be in writing and shall be sufficiently given only if personally delivered, mailed by registered, certified or first class mail, via Certified Email to the Email address indicated below, transmitted by a reputable express courier service or transmitted by telecopier and confirmed by first class mail within 24 hours to the party to receive notice at the following addresses, or at such other addresses as party may, by notice, direct.

- i. If notice to PHMC, then to:

Administrative Representative:
 Contracts Manager
 Public Health Management
 Corporation
 Centre Square East
 1500 Market Street, LM500
 Philadelphia, PA 19102
contracts@phmc.org

Client Services Representative:
 Meghan Love
 Public Health Management
 Corporation
 Centre Square East
 1500 Market Street, LM500
 Philadelphia, PA 19102
mlove@phmc.org
 215-399-0990

- ii. If notice to Licensee, then to:

- b. Altering Addresses / Addressees. Any Party may alter the address to which communications are to be sent by giving notice of such change of address in conformity with the provisions of this Section providing for the giving of notice.

19. MISCELLANEOUS

- a. Non-Discrimination. Both parties agree that in the performance of this Agreement, there will be no discrimination against any individual or groups on account of any Federal, State or Local law, regulation or rule, including but not limited to race, color, gender, sexual preference, religious creed, ancestry, disability, age or national origin. Receipt by either party of evidence of such discrimination shall be cause for termination.
- b. Waivers. Any delay of forbearance by either Party in exercising any right hereunder shall not be deemed a waiver of that right.
- c. Amendments. This Agreement may not be amended, modified, varied or supplemented except by an amendment signed by duly authorized representatives of both Parties.
- d. Limitation of Actions. Any arbitration by either Party for breach of this Agreement must be commenced within one (1) year after the complaining Party knew or should have known of such breach.
- e. Severability. The provisions of this Agreement are independent of and severable from each other. No provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any one or more of the other provisions hereof may be invalid or unenforceable in whole or in part.
- f. Titles. The titles of the Sections and subsections of this Agreement are for convenience or reference

only and are not in any way intended to limit or amplify the terms or conditions of this Agreement.

- g. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one Agreement.
- h. Publicity. Each Party agrees not to publicize or disclose the existence or terms of this Agreement to any third party without the prior written consent of the other, except as required by law. In particular, no press releases shall be made without the mutual written consent of each Party.
- i. Independent Contractors. The relationship of the Parties under this Agreement is that of independent contractors, and neither Party is an employee, agent, partner or joint venture of the other.
- j. Force Majeure. Neither Party shall be deemed to be in breach or default of this Agreement if there is any total or partial failure in the performance by it of its duties and obligations hereunder occasioned by any acts of God, fire, act of government or state, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining materials, energy or other supplies, priorities, strike, labor disputes of whatever nature beyond such Party's reasonable control ("Force Majeure"). Such non-performing Party shall be excused the performance by the other Party and shall not be in breach of this Agreement for a period equal to any such prevention, delay or stoppage. The Party affected by any of the Force Majeure circumstances or conditions contemplated by this Section shall promptly notify the other Party, in writing, of the circumstances in sufficient detail to inform the unaffected Party in accordance with the notice provisions hereof. Any such performance obligations shall continue upon the conclusion of the related Force Majeure event.
- k. Counterparts and Fax Signatures. This Agreement may be executed in counterparts, each of which will constitute an original, and all of which will constitute one agreement. A signature transmitted via facsimile or scanned original will be deemed an enforceable signature for the purpose of demonstrating the signing party's assent to the Agreement.
- l. Survivability. All of the warranties, representations, covenants and indemnifications of each party under this Agreement shall survive the expiration or termination of this Agreement as well as any other provision which by its nature is intended to survive the expiration or termination of this Agreement.
- m. Entire Agreement. This Agreement and the Exhibits hereto, together with any SOWs executed by the Parties, shall constitute the full and entire understanding and agreement between the Parties with regard to the subject matter hereof and thereof, and supersede all prior agreements, understandings, inducements or conditions, express or implied, oral or written, except as herein contained. The express terms hereof shall control and supersede any course of performance and/or usage of trade inconsistent with any of the terms hereof.

The Agreement will become effective upon execution of Agreement by both Parties and receipt by PHMC of the initial annual License Fee payment, whereupon all of the terms and provisions of this Agreement shall become binding upon Licensee and PHMC.

PUBLIC HEALTH MANAGEMENT CORPORATION

MADISON COUNTY ADULT DRUG COURT

Signed: _____
 By: _____
 Title: _____
 Date: _____

Signed: _____
 By: _____
 Title: _____
 Date: _____

**SOFTWARE LICENSE AND SERVICES AGREEMENT
("AGREEMENT")**

SCHEDULE A

LICENSING AND DEVELOPMENT FEES
Streamlined RANT®

**Treatment Research Solutions at
Public Health Management Corporation
(PHMC)**

Contact:

Meghan Love
Product Director
Treatment Research Solutions @
Public Health Management Corporation
1500 Market Street
Centre Square, East Tower, 15th fl.
Philadelphia, PA 19102
mlove@tri.phmc.org
(215) 399-0990
EIN # 23-7221025

LICENSING

<i>Product Name</i>	<i>Version</i>	<i>No. of Servers</i>	<i>Permitted Users</i>	<i>Fees</i>
Streamlined RANT®	1	1	up to 5	\$1,100 per year, per court

MAINTENANCE & SUPPORT

<i>Service Name</i>	<i>Service Details</i>	<i>Fees</i>
Networking Subscription	RANT Instrument Access Provided for Users within Individual Courts	\$350 per court
Initial Training	1 Session – Remote Training	\$750
Additional Training Sessions	Per Session – Remote Training	ROLE Rates Apply
Remote Support (Phone/Email)	Mon - Fri 8:30am – 5pm EST	Included in Annual Fee
Remote Support (Phone/Email)	All Other Times	Network Admin Rates Apply
On-Site Support	Requires Separate SOW	TBD in conjunction with SOW

PROFESSIONAL SERVICE RATES

Any additional services shall require the acceptance and authorization of a formal Statement of Work (SOW) by Licensee in advance of the commencement of any labor. Should additional services be required, those services will also be billed at the following hourly rates:

ROLE	RATE
Application Lead	\$125 /hr.
Integration Lead/DBA	\$125 /hr.
IT Project Manager	\$110 /hr.
Billing Team Lead	\$104 /hr.
Network Admin	\$105 /hr.

SOFTWARE & SERVICES SUMMARY

Streamlined RANT®

Treatment Research Solutions at Public Health Management Corporation (PHMC)

Contact:

Meghan Love

Product Director

Treatment Research Solutions @
Public Health Management

Corporation

1500 Market Street

Centre Square, East Tower, 15th fl.

Philadelphia, PA 19102

mlove@tri.phmc.org

(215) 399-0990

EIN # 23-7221025

Treatment Research Solutions @ Public Health Management Corporation (PHMC) professional services to Licensee as requested by Licensee consisting of:

Network Services

Hosting and maintenance of the streamlined RANT® website and the underlying server and networking infrastructure.

Availability of a “help desk” by phone or email messages to answer substantive questions about the intent of the RANT website.

Additional Requirements

Any additional work, such as re-programming or generation of new reports or data analyses, will be billed separately at PHMC’s customary hourly rate outlined in **SCHEDULE A – LICENSING AND DEVELOPMENT FEES**. In addition, if web conference or on-site training(s) is/are requested, additional costs will be charged for time and travel-related expenses of PHMC staff. PHMC will submit a monthly invoice and work breakdown detailing the number of hours worked and services rendered.

Maintenance and Support Escalation Procedures

PHMC shall reasonably determine the Severity Level of errors and will make commercially reasonable efforts to provide a resolution designed to solve or temporarily by-pass a reported error, pursuant to the below protocols. If such error has been corrected in a maintenance release, Licensee must install and implement the applicable maintenance release; otherwise the update may be provided in the form of a temporary fix, procedure or routine, to be used until a maintenance release containing the permanent update is available. In all cases, resolution of issues by PHMC will require the Licensee to assist in the descriptive documentation and/or reproduction of the error, identify a Licensee contact person with whom PHMC can maintain contact to arrange for analysis, testing, systems, and other resources and other tasks in support of resolution of the Licensee's error and to whom status reports and requests for resources can be addressed.

Priority Level HIGH: PHMC promptly initiates the following procedures: (1) assigns Client Support representative to correct the error on an expedited basis; (2) provides ongoing communication on the status of an update; and (3) begins to provide a temporary workaround or fix. Priority Level HIGH error means the (i) system is severely impacted or completely shut down, or (ii) system operations or mission-critical applications are down.

Priority Level MEDIUM: PHMC assigns a Client Support representative to begin an update, and provides

additional, escalated procedures as reasonably determined necessary by PHMC Client Support staff. PHMC exercises commercially reasonable efforts to provide a workaround or include a fix for the Severity Level 2 errors in the next maintenance release. A Severity Level 2 error means (i) the system is functioning with limited capabilities, or (ii) is unstable with periodic interruptions, or (iii) mission critical applications, while not being affected, have experienced significant system interruptions.

Priority Level LOW: PHMC may include an update in the next maintenance release. A Severity Level 3 error means there (i) are errors in fully operational production systems, (ii) is a need to clarify procedures or information in documentation, or (iii) is a request for a product enhancement.

Severity Level'	Targeted First Response	Targeted Resolution Time and Type	Targeted Status Report	Management Notification	Management Contacts
Severity Level 1	Within 1 business hours	Continuous effort until Resolved	By Licensee agreement	Within 1 business Day	Director of Client Services or the equivalent
Severity Level 2	4 business Hours	Workaround or include fix in next Maintenance Release	Every other working day	Within 2 business Days	Director of Client Services or the equivalent
Severity Level 3	8 business Hours	Update may be included in Next Maintenance release. Clarification is given.	N/A	N/A	Director of Client Services or the equivalent

Exhibit C
BUSINESS ASSOCIATE AGREEMENT

This Agreement is entered into between **Madison County Adult Drug Court**, defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45, C.F.R. Part 160 and Part 164, Subparts A and E, the Standards for Privacy of Individually Identifiable Health Information (the “Privacy Rule”), and **Public Health Management Corporation (PHMC)**, a “Business Associate,” as that term is also defined by HIPAA, including the requirements for Business Associates set forth as 45 C.F.R. § 164.504(e).

Whereas, Covered Entity and Business Associate desire to enter into a contract under which Business Associate will be providing services on behalf of the Covered Entity.

Whereas, in connection with the provision of such services by Business Associate, the Covered Entity may disclose to Business Associate certain Protected Health Information (as defined below).

Whereas, Business Associate and the Covered Entity desire to enter into a Business Associate Agreement for the purpose of addressing the Privacy Rule, the Security Rule, and the Electronic Transaction Rule, (as those terms are defined below), and for addressing the privacy and security provisions set forth in the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), contained in Title XIII, Subtitle D, of the American Recovery and Reinvestment Act of 2009.

Therefore, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Business Associate and the Covered Entity agree as follows:

ARTICLE 1. DEFINITIONS

- 1.1. “*Agreement*” shall mean this document, including all exhibits, attachments, and properly executed amendments and addendums.
- 1.2. “*Breach*” shall have the same meaning as the term “breach” in 45 C.F.R. § 164.402.
- 1.3. “*Electronic Health Record*” shall have the same meaning as the term “electronic protected health information” in § 13400(5) of the American Recovery and Reinvestment Act of 2009.
- 1.4. “*Electronic Protected Health Information*” shall have the same meaning as the term “electronic protected health information” in 45 C.F.R. § 160.103.

- 1.5 “*Electronic Transaction Rule*” shall mean the final regulations issued by the U.S. Department of Health and Human Services concerning standard transactions and code sets under 45 C.F.R. Parts 160 and 162.
- 1.6 “*Individual*” shall mean the person who is the subject of the Protected Health Information or a person who qualifies as the personal representative of the individual in accordance with 45 C.F.R. § 164.502(g).
- 1.7 “*Privacy Rule*” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.
- 1.8 “*Protected Health Information*” shall mean any information that: (a) relates to the past, present, or future physical or mental health or condition of an Individual; (b) the provision of health care to an Individual; (c) or the past, present, or future payment for the provision of health care to an Individual; and (d) that identifies the Individual for or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual.
- 1.9 “*Required By Law*” shall have the same meaning as the term “required by law” in 45 C.F.R. § 160.103.
- 1.10 “*Secretary*” shall mean the Secretary of the Department of Health and Human Services (“HHS”) and any other officer or employee of HHS to whom authority has been delegated.
- 1.11 “*Security Incident*” shall have the same meaning as the term “security incident” in 45 C.F.R. § 160.103.
- 1.12 “*Security Rule*” shall mean the Security Standards and Implementation Specifications at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- 1.13 “*Transaction*” shall have the same meaning as the term “transaction” in 45 C.F.R. § 160.103.
- 1.14 “*Unsecured Protected Health Information*” shall have the same meaning as the term “unsecured protected health information” in 45 C.F.R. § 164.402.

ARTICLE 2. SAFEGUARDING PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION

- 2.1 Permitted Uses and Disclosures. Business Associate hereby agrees that it shall be prohibited from using or disclosing Protected Health Information provided or made available by the Covered Entity (or another Business Associate of the Covered Entity) for any purpose other than as expressly permitted or required by the Subcontractor Contract.

- a. **Functions and Activities on Covered Entity's Behalf.** Except as otherwise set forth in this Agreement, the parties hereby agree that Business Associate shall be permitted to use and/or disclose Protected Health Information provided or made available by the Covered Entity (or another business associate of the Covered Entity) only for the purpose of conducting the transactions contemplated for the Business Associate under the underlying Subcontractor Contract and only for purposes within the scope of such underlying Subcontractor Contract.
- b. **Business Operations.** Business Associate is permitted to use and/or disclose Protected Health Information if necessary for the proper management and administration of Business Associate's responsibilities under the Subcontractor Contract, or to carry out any legal responsibilities of Business Associate, provided that, with respect to any disclosure of Protected Health Information, either:
- (1) the disclosure is Required By Law; or
 - (2) Business Associate obtains reasonable assurances from the person to whom the Protected Health Information is disclosed that: (a) the Protected Health Information will be held in confidence and used or further disclosed only as or for the purposes for which Business Associate disclosed the Protected Health Information to the person or as Required by Law; (b) the person will use appropriate safeguards to prevent use or disclosure of the Protected Health Information; and (c) the person immediately notifies Business Associate of any instance of which it is aware in which the confidentiality of the Protected Health Information has been breached.
- c. **Data Aggregation Services.** Business Associate is permitted to use or disclose Protected Health Information to provide data aggregation services, as that term is defined by 45 C.F.R. § 164.501, relating to health care operations of the Covered Entity.
- d. **Minimum Necessary.** Business Associate will, in its performance of the functions, activities, services, and operations specified above, make reasonable efforts to use, to disclose, and to request only the minimum amount of Covered Entity's Protected Health Information reasonably necessary to accomplish the intended purpose of the use, disclosure or request, except that Business Associate will not be obligated to comply with this minimum-necessary limitation if neither Business Associate nor Covered Entity is required to limit its use, disclosure or request to the minimum necessary. Business Associate and Covered Entity acknowledge that the phrase "minimum necessary" shall be interpreted in accordance with the HITECH Act.

2.2 Information Safeguards.

- a. **Privacy of Covered Entity's Protected Health Information.** Business Associate will develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to protect the privacy of Covered Entity's Protected Health Information. The safeguards must reasonably protect Covered Entity's Protected Health Information from any intentional or unintentional use or disclosure in violation of the Privacy Rule and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this Agreement.
- b. **Security of Covered Entity's Electronic Protected Health Information.** Business Associate will develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that Business Associate creates, receives, maintains, or transmits on Covered Entity's behalf as required by the Security Rule.

2.3 Employees, Subcontractors, Independent Contractors, and Agents. Business Associate will require any of its Employees, Subcontractors, Independent Contractors, and Agents to which Business Associate is permitted by this Agreement, or in writing by Covered Entity, to disclose Covered Entity's Protected Health Information and/or Electronic Protected Health Information, to provide assurance in writing that Employee, Resource Parent, Subcontractor, Independent Contractor, or Agent understands the requirements to safeguard and protect PHI and will comply with the same privacy and security safeguard obligations with respect to Covered Entity's Protected Health Information and/or Electronic Protected Health Information as are applicable to Business Associate under this Agreement.

2.4 Prohibition on Sale of Records. Business Associate shall not directly or indirectly receive remuneration in exchange for any Protected Health Information of an Individual unless the Covered Entity or Business Associate obtains from the Individual, in accordance with 45 C.F.R. § 164.508, a valid authorization that includes a specification of whether the Protected Health Information can be further exchanged for remuneration by the entity receiving Protected Health Information of that Individual, except as otherwise allowed under the HITECH Act.

2.5 Penalties For Noncompliance. Business Associate acknowledges that it is subject to civil and criminal enforcement for failure to comply with the Privacy Rule and Security Rule, as amended by the HITECH Act.

ARTICLE 3. COMPLIANCE WITH ELECTRONIC TRANSACTION RULE

If Business Associate conducts in whole or part electronic Transactions on behalf of Covered Entity for which HHS has established standards, Business Associate will comply, and will require any Employees, Subcontractors, Independent Contractors, and Agents it involves with the conduct of such Transactions to comply, with each applicable requirement of the Electronic Transaction Rule. Business Associate shall also comply with the National Provider Identifier requirements, if and to the extent applicable.

ARTICLE 4. INDIVIDUAL RIGHTS

- 4.1 Access. Business Associate will make available to Covered Entity or, at Covered Entity's direction, to an Individual (or the Individual's personal representative) for inspection and obtaining copies Covered Entity's Protected Health Information about the Individual that is in Business Associate's custody or control, so that Covered Entity may meet its access obligations under 45 C.F.R. § 164.524. Effective as of the date specified by HHS, if the Protected Health Information is held in an Electronic Health Record, then the Individual shall have a right to obtain from Business Associate a copy of such information in an electronic format. Business Associate shall provide such a copy to Covered Entity or, alternatively, to the Individual directly, if such alternative choice is clearly, conspicuously, and specifically made by the Individual or Covered Entity.
- 4.2 Amendment. Business Associate will, upon receipt of written notice from Covered Entity, promptly amend or permit Covered Entity access to amend any portion of Covered Entity's Protected Health Information, so that Covered Entity may meet its amendment obligations under 45 C.F.R. § 164.526.
- 4.3 Disclosure Accounting. To allow Covered Entity to meet its disclosure accounting obligations under 45 C.F.R. § 164.528:
- a. **Disclosures Subject to Accounting.** Business Associate will record the information specified below ("Disclosure Information") for each disclosure of Covered Entity's Protected Health Information, not excepted from disclosure accounting as specified below, that Business Associate makes to Covered Entity or to a third party.
 - b. **Disclosures Not Subject to Accounting.** Business Associate will not be obligated to record Disclosure Information or otherwise account for disclosures of Covered Entity's Protected Health Information if Covered Entity need not account for such disclosures.
 - c. **Disclosure Information.** With respect to any disclosure by Business Associate of Covered Entity's Protected Health Information that is not excepted from disclosure accounting, Business Associate will record the following Disclosure Information as applicable to the type of accountable disclosure made:

- (1) **Disclosure Information Generally.** Except for repetitive disclosures of Covered Entity's Protected Health Information as specified below, the Disclosure Information that Business Associate must record for each accountable disclosure is (i) the disclosure date, (ii) the name and (if known) address of the entity to which Business Associate made the disclosure, (iii) a brief description of Covered Entity's Protected Health Information disclosed, and (iv) a brief statement of the purpose of the disclosure.
- (2) **Disclosure Information for Repetitive Disclosures.** For repetitive disclosures of Covered Entity's Protected Health Information that Business Associate makes for a single purpose to the same person or entity (including Covered Entity), the Disclosure Information that Business Associate must record is either the Disclosure Information specified above for each accountable disclosure, or (i) the Disclosure Information specified above for the first of the repetitive accountable disclosures; (ii) the frequency, periodicity, or number of the repetitive accountable disclosures; and (iii) the date of the last of the repetitive accountable disclosures.

d. **Availability of Disclosure Information.** Business Associate will maintain the Disclosure Information for at least 6 years following the date of the accountable disclosure to which the Disclosure Information relates (3 years for disclosures related to an Electronic Health Records, starting with the date specified by HHS). Business Associate will make the Disclosure Information available to Covered Entity within 15 calendar days following Covered Entity's request for such Disclosure Information to comply with an Individual's request for disclosure accounting. Effective as of the date specified by HHS, with respect to disclosures related to an Electronic Health Record, Business Associate shall provide the accounting directly to an Individual making such a disclosure request, if a direct response is requested by the Individual.

4.4 Restriction Agreements and Confidential Communications. Business Associate will comply with any agreement that Covered Entity makes that either (i) restricts use or disclosure of Covered Entity's Protected Health Information pursuant to 45 C.F.R. § 164.522(a), or (ii) requires confidential communication about Covered Entity's Protected Health Information pursuant to 45 C.F.R. § 164.522(b), provided that Covered Entity notifies Business Associate in writing of the restriction or confidential communication obligations that Business Associate must follow. Covered Entity will promptly notify Business Associate in writing of the termination of any such restriction agreement or confidential communication requirement and, with respect to termination of any such restriction agreement, instruct Business Associate whether any of Covered Entity's Protected Health Information will remain subject to the terms of the restriction agreement. Effective February 17, 2010 (or such other date specified as the effective date by HHS), Business Associate will comply with any restriction request if: (i) except as otherwise Required by Law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and

(ii) the Protected Health Information pertains solely to a health care item or service for which the health care provider involved has been paid out-of-pocket in full.

ARTICLE 5. BREACHES

- 5.1 **Privacy or Security Breach.** Business Associate will report to Covered Entity any use or disclosure of Covered Entity's Protected Health Information not permitted by this Agreement along with any Breach of Covered Entity's Unsecured Protected Health Information. Business Associate will treat the Breach as being discovered in accordance with 45 CFR §164.410. Business Associate will make the report to the Covered Entity not more than 5 calendar days after Business Associate learns of such non-permitted use or disclosure. If a delay is requested by a law-enforcement official in accordance with 45 CFR §164.412, Business Associate may delay notifying Covered Entity for the applicable time period. Business Associate's report will at least:
- a. Identify the nature of the Breach or other non-permitted use or disclosure, which will include a brief description of what happened, including the date of any Breach and the date of the discovery of any Breach;
 - b. Identify Covered Entity's Protected Health Information that was subject to the non-permitted use or disclosure or Breach (such as whether full name, social security number, date of birth, home address, account number or other information were involved) on an individual basis;
 - c. Identify who made the non-permitted use or disclosure and who received the non-permitted disclosure;
 - d. Identify what corrective or investigational action Business Associate took or will take to prevent further non-permitted uses or disclosures, to mitigate harmful effects and to protect against any further Breaches;
 - e. Identify what steps the Individuals who were subject to a Breach should take to protect themselves;
 - f. Provide such other information, including a written report, as Covered Entity may reasonably request.
- 5.2 **Security Incidents.** Business Associate will report to Covered Entity any attempted or successful (A) unauthorized access, use, disclosure, modification, or destruction of Covered Entity's Electronic Protected Health Information or (B) interference with Business Associate's system operations in Business Associate's information systems, of which Business Associate becomes aware. Business Associate will make this report upon request, except if any such Security Incident resulted in a disclosure not permitted by this Agreement or Breach of Covered Entity's Unsecured Protected Health Information, Business Associate will make the report in accordance with the provisions set forth in Section 5.1.

ARTICLE 6. TERM AND TERMINATION

- 6.1 Term. This Agreement shall be effective on the date that Business Associate's Subcontractor Contract commences with the Covered Entity and shall terminate when all Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity or the Department, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this section.
- 6.2 Right to Terminate for Cause. The Covered Entity may terminate the Subcontractor Contract if it determines, in its sole discretion, that Business Associate has breached any provision of this Business Associate Agreement, and upon written notice to Business Associate of the Breach, Business Associate fails to cure the Breach within 30 calendar days after receipt of the notice. Any such termination will be effective immediately or at such other date specified in Covered Entity's notice of termination.
- 6.3 Return or Destruction of Covered Entity's Protected Health Information as Feasible. Upon termination or other conclusion of the Subcontractor Contract, Business Associate agrees to return all Protected Health Information received from the Covered Entity, or created or received by Business Associate on behalf of the Covered Entity, and not to retain any copies of the Protected Health Information after termination of the Subcontractor Contract. If Business Associate elects to destroy the Protected Health Information, it shall certify to the Covered Entity and the Pennsylvania Department of Public Health when applicable that the Protected Health Information has been destroyed.
- 6.4 Continuing Privacy and Security Obligation. If return or destruction of the Protected Health Information is not feasible, Business Associate agrees to extend the protections of this Business Associate Agreement for as long as necessary to protect the Protected Health Information and to limit any further use or disclosure so as to be consistent with the intent of this Business Associate Agreement.

ARTICLE 7. GENERAL PROVISIONS

- 7.1 Access to Books and Records. Business Associate hereby agrees to make its internal practices, books and records relating to the use, disclosure, and safeguards for Protected Health Information received from, or created or received by Business Associate on behalf of the Covered Entity, available to the Secretary or the Secretary's designee for purposes of determining compliance with the Privacy Rule and/or the Security Rule.
- 7.2 Mitigation Procedures. Business Associate agrees to have procedures in place for mitigating, to the extent practicable, any deleterious effect from the use or disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of the Covered Entity, in a manner contrary to this Business Associate Agreement or the Privacy Rule.

- 7.3 Amendment to Business Associate Agreement. Upon the compliance date of any final regulation or amendment to final regulation promulgated by HHS that affects Business Associate or Covered Entity's obligations under this Agreement, this Agreement will be automatically amended such that the obligations imposed on Business Associate or Covered Entity remain in compliance with the final regulation or amendment to final regulation.
- 7.4 Omnibus Rule. The U.S. Department of Health and Human Services released the Omnibus Rule, effective March 26, 2013 applicable to existing Privacy, Security, and Enforcement Rules for protected health information ("PHI") under HIPAA and improving enforcement under the Health Information Technology for Economic and Clinical health (HITECH) Act. The Omnibus Rule modifies the Breach Notification Rule. Pursuant to the Omnibus Rule, effective March 26, 2013, Business Associate is directly liable for compliance with HIPAA Privacy and Security Rule requirements including: impermissible uses and disclosures; failure to provide breach notification to the Covered Entity; failure to disclose PHI where required by the Secretary to investigate or determine the business associate's compliance with the HIPAA Rules; failure to provide an accounting of disclosures; and failure to comply with the requirements of the Security Rule.
- 7.5 Choice of Law. Except to the extent superseded by the federal law, this Business Associate Agreement shall be governed by the laws of the Commonwealth of Pennsylvania without regard to choice of laws principles; provided, however, that for the purposes of privacy rights of Individuals, the law of the state in which the Individual resided during the event(s) giving rise to the need to determine the rights under this Agreement shall apply.
- 7.6 Disputes. Any controversy or claim arising out of or relating to the underlying Subcontractor Contract or this Business Associate Agreement will be finally settled by compulsory arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA").
- 7.7 Injunctive Relief. Notwithstanding any rights or remedies provided for in this Agreement, the Covered Entity retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of Protected Health Information by Business Associate or any Employee, Subcontractors, Independent Contractors, Agents, Contractors, and/or Third Parties that received Protected Health Information from Business Associate.

- 7.8 Notices. Whenever under this Business Associate Agreement one party is required to give notice to the other, such notice shall be deemed given if mailed by a nationally recognized overnight courier service (*e.g.*, Federal Express or United parcel Service), payment paid by sender; Certified Electronic Mail (*e.g.*, DocuSign), or by United States Registered or Certified Mail, Return Receipt Requested, postage prepaid by sender, and addressed as follows:

Covered Entity:

Madison County Adult Drug Court
128 W. North Street
Canton, MS 39046

Business Associate:

Public Health Management Corporation
1500 Market St., LM500
Philadelphia, PA 19102
contracts@phmc.org

- 7.9 Binding Nature and Assignment. This Agreement shall be binding on Business Associate and the Covered Entity and their successors and assigns, but neither Business Associate nor the Covered Entity may assign this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld.
- 7.10 Headings. The headings in this Agreement are for reference and convenience only, and shall not enter into the interpretation of this Agreement.
- 7.11 Force Majeure. Business Associate shall be excused from performance under this Agreement for any period Business Associate is prevented from performing any services pursuant hereto, in whole or in part, as a result of an act of God, war, civil disturbance, court order, labor dispute or other cause beyond its reasonable control, and such non-performance shall not be grounds for termination.
- 7.12 Attorneys' Fees. Except as otherwise specified in this Business Associate Agreement, if any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, misrepresentation, or injunctive action, in connection with any of the provisions of this Agreement, each party shall bear their own legal expenses and the other costs incurred in that action or proceeding.
- 7.13 Entire Agreement. This Business Associate Agreement constitutes the entire agreement between the parties and shall replace any previous Business Associate Agreement between the parties.

IN WITNESS WHEREOF, Business Associate and the Covered Entity have caused this Business Associate Agreement to be signed and delivered by their duly authorized representatives as of the date set forth above.

BUSINESS ASSOCIATE:

**PUBLIC HEALTH MANAGEMENT
CORPORATION**

COVERED ENTITY:

**MADISON COUNTY ADULT DRUG
COURT**

Signed: _____

By: _____

Title: _____

Date: _____

Signed: _____

By: _____

Title: _____

Date: _____