**Customer Agreement for Licensed Access to the EVVE FOD System**

**This Customer Agreement for Licensed Access to the EVVE FOD System** (this “Agreement”) is entered into as of this \_\_\_ day of \_\_\_ 20\_\_ (the “Effective Date”)by and between the entity identified below (“Customer”) and **The National Association for Public Health Statistics and Information Systems**, a non-stock Maryland corporation (“NAPHSIS”).

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | | **NAPHSIS** | | **Customer** | |
| Name | | NAPHSIS | | [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] | |
| State & Country Organized | | Maryland | | [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] | |
| Primary Office Address | | 962 Wayne Avenue, Suite 701, Silver Spring, MD 20910 | | [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]  [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] | |
| Mailing Address *(if different)* | | same as above | | [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] | |
| Notices sent to Attention of: | | EVVE Manager | | [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] | |
| Primary Contact Person(s) | Name | Anthony Stout | | [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] | |
| Phone | (301) 563-6005 | | [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] | |
| email | [astout@naphsis.org](mailto:rtrasatti@naphsis.org) | | [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] | |
| Name | Angie Cherepy | | [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] | |
| Phone | (510) 912-0123 | | [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] | |
| email | [acherepy@naphsis.org](mailto:acherepy@naphsis.org) | | [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] | |
| Initial Term | 3 years | | Initial Credentialed Date | | [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] |
| Data Use Category | | | | [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] | |

NAPHSIS is a non-profit corporation formed to improve the stewardship of vital records and statistics. In furtherance of that mission, NAPHSIS owns and administers the Electronic Verification of Vital Events Fact of Death Nationwide System (the “EVVE FOD System” or “System”), which enables credentialed Customers to: (a) send fact-of-death queries (“Queries”) to participating vital records offices (the “JVROs”); and (b) receive fact-of-death reports (“Reports”) in response to those Queries from applicable JVROs.

During, and subject to the terms and conditions of, this Agreement, Customer wishes to obtain from NAPHSIS a limited license to access the System solely for Approved Purposes. The Agreement includes this signature page (the “Signature Page”), plus the attached **Exhibit A** –Terms and Conditions. Solely in the event that Customer is a U.S. government agency, the “Rider to Customer Agreement for Licensed Access to the EVVE FOD System (for U.S. Government End Users)” (the “Rider”) referenced in Section 11.5 and attached as **Exhibit B** shall be deemed to amend this Agreement; to the extent of any conflict between any term or condition of the Rider and the body of this Agreement, the Rider shall take precedence and prevail.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and delivered by their duly authorized representatives, as of the Effective Date.

|  |  |  |
| --- | --- | --- |
| **NAPHSIS**  Signature:  Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | **Customer**  Signature:  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**Exhibit A**

**Terms and Conditions**

In consideration of the mutual benefits contained herein, NAPHSIS and Customer agree as follows:

1. Scope of Agreement; Credentialing.

1.1 Scope.Subject to the terms and conditions of this Agreement, and in exchange for the timely payment of applicable fees, NAPHSIS grants Customer a limited, non-exclusive, non-transferable, revocable license to do the following, solely for Approved Purposes (as defined in Section 1.2): (a) create a Customer user account for the Services (the “User Account”); (b) while logged into the User Account, remotely access and use the System via a web user interface made available by NAPHSIS (or an alternative secure communication method then-approved by NAPHSIS in writing and available) to (i) send Queries to participating JVROs and (ii) receive Reports in response to those Queries from applicable JVROs; and (c) use those Reports internally solely for Approved Purposes (collectively, the “Services”).

1.2 **Credentialing.** “Credentialing” is a mandatory process by which NAPHSIS approves or disapproves a customer’s proposed access and use of the Services. An approved customer is deemed to be “Credentialed” for a designated period within one or more categories (each, a “Data Use Category”), provided that the customer continues to meet applicable minimum requirements. Customer shall submit to the then-current Credentialing process, including by completing, executing and submitting a Credentialing application: (a) prior toany use of or access tothe Services; (b) upon any material change with respect to Customer; (c) upon any change to Customer’s proposed use of the Services; and (d) in the discretion of NAPHSIS. If Credentialed by NAPHSIS, Customer shall: (i) use and access the Services solely to the extent to which Customer has been Credentialed, in accordance with the applicable Data Use Category and then-current System rules (“Approved Purposes”); (ii) ensure that Customer continues to meet minimum requirements applicable to its Data Use Category; and (iii) immediately notify NAPHSIS in writing in advance should any information included on Customer’s Credentialing application change, or if any other change would trigger Credentialing. If NAPHSIS determines that any change(s) results in Customer’s loss of Credentialed status, NAPHSIS will notify Customer in writing. Loss of Credentialed status shall automatically suspend Customer’s right to access and use the Services. Credentialing decisions are in the sole and absolute discretion of NAPHSIS. Individual JVROs may have their own credentialing requirements, based on local laws or regulations; hence, Credentialing by NAPHSIS does not necessarily entitle Customer to send Queries and receive Reports from every JVRO. Each JVRO must authorize the use of death data for each Data Use Category.

**2. Support.** During the term, except during periods of scheduled maintenance, unexpected downtime and force majeure, NAPHSIS will use its commercially reasonable efforts to provide Customer with 24/7 access to the System and help desk support. Without prior notice, NAPHSISreserves therights in its sole and absolute discretion to change, discontinue, or deprecate any or all aspects of the Services, or to change or remove features or functionality of the Services, from time to time.

3. Agreement Term & Termination.

**3.1 Initial Term and Renewals.** Unless earlier terminated in accordance with this Section 3, the term of this Agreement shall: (a) commence on the Effective Date and continue for the initial term indicated on the Signature Page (the “Initial Term”); and (b) automatically renew for successive one year periods, unless either party provides written notice of non-renewal no less than 60 days prior to the end of the then-current term. The Initial Term and any renewal(s) thereof are collectively referred to as the “Term.”

**3.2 Termination.** Either party may terminate this Agreement if the other party fails to cure a material breach within 30 days after receipt of written notice thereof. Without limiting the generality of the foregoing, any change which results in loss of Credentialed status constitutes a material breach. In addition, either party may terminate this Agreement without cause by providing at least 60 days’ written notice thereof, and NAPHSIS may immediately terminate this Agreement without notice if Customer loses its Credentialed status. NAPHSIS will have no liability for such termination. In the event either party becomes liquidated, dissolved, bankrupt or insolvent, whether voluntarily or involuntarily, or shall take any action so declared, the other party shall have the right to terminate this Agreement immediately. Except as set forth in Sections 3, 4 (solely with respect to fees arising before termination and related expenses) and 5 - 11, which shall survive termination, upon termination of this Agreement, all rights and duties of the parties under this Agreement shall expire. Immediately upon termination, Customer shall pay any and all fees to NAPHSIS.

## **4. Fees and payments.**

**4.1 Fees.** Within 30 days after receipt of an invoice from NAPHSIS, Customer shall pay all fees for Services rendered in connection with the Credentialing process and any and all uses of the System, including fees for Queries sent and Reports received, in accordance with the then-current price sheet for such services. Payment shall be made in immediately available funds, in U.S. dollars, without any right of set-off or deduction.

**4.2 Late Payments.** Any payment not made when due shall accrue late payment fees at the rate of 1.5% per month or the highest amount allowable by law, whichever is lower, such interest to accrue on a daily basis after as well as before any judgment relating to collection of the amount due. Late fees shall not constitute an election of, or NAPHSIS’ exclusive, remedy. Failure to pay fees when due shall entitle NAPHSIS to terminate this Agreement upon notice to Customer pursuant to Section 3.2. Customer agrees to pay any and all legal fees, collection fees and other expenses incurred by NAPHSIS to enforce this Agreement or otherwise due to Customer’s failure to pay any amounts due.

**4.3 Taxes.** All fees are exclusive of local, state, federal and international sales, value added, excise, withholding and other taxes and duties of any kind. Customer is responsible for, and agrees to pay, any and all taxes and duties arising out of or in connection with this Agreement, other than taxes levied or imposed upon NAPHSIS’ net income. If NAPHSIS has the legal obligation to pay or collect any taxes as described above, Customer shall pay such amounts directly to NAPHSIS in advance or reimburse NAPHSIS for amounts paid.

**5. Conditions of Use and Other Limitations.**

**5.1 General Conditions.** Customer shall not use any Report or any other aspect of the Services: (a) for any purpose which violates applicable local, state, national or international laws or regulations; (b) in a way that infringes, misappropriates or otherwise violates the privacy, copyright, patent, trade secret, trademark or other intellectual property, proprietary or personal rights of NAPHSIS or any third party; (c) for any spamming, chain letters or other use that may be disruptive; (d) in violation of any regulation, policy or procedure of any network through which the Services may be accessed or used; (e) to access or attempt to access any software, content or account for which Customer has no access authorization, or to duplicate, modify, distribute or display any content from any such account; or (f) to store, retrieve, transmit or view any content that contains any illegal images, materials or information, any harassing, libelous, abusive, threatening or harmful material of any kind or nature, any material that encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national or international law or regulation, any code or material that violates the intellectual property rights of others, or any viruses, worms, "Trojan horses" or any other similar contaminating or destructive features.

**5.2 Limitations on Use of Data and Reports.** Except to the extent expressly permitted in a separate, signed reseller Agreement with NAPHSIS,Customer may not use the Services or any Report or any information obtained therefrom for any purpose except as expressly permitted in this Agreement. Without limiting the generality of the foregoing limitation, Customer will not, and will not allow others to: (a) copy or modify the Services or any Report or any part(s) thereof; (b) reverse engineer, decompile, disassemble, derive the source code of, create derivative works from or otherwise exploit the Service or any Report (except to the extent that such restriction is expressly prohibited by applicable law); (c) sell, lease, rent, lend, share, release, license, sublicense, distribute, pledge, make available, aggregate or charge any another organization or person for use of or access to the Services or any Report, whether directly or indirectly; (d) use the Service or any Report to operate in or as a time-sharing, outsourcing, service bureau, application service provider or managed service provider environment; (e) remove, modify or obscure any copyright, trademark or other proprietary rights notices which appear in or on the Services or any Report; (f) permit third party access, or take actions which result in access, or attempts to access, the Services or any Report from more than one computer at any one time; or (g) distribute or share any user name or password with anyone.

* 1. **Access Security.** Customer: (a) represents and warrants that Customer has substantial experience in maintaining the confidentiality, security and appropriate use of data at least as sensitive as data generated by the Services; and (b) agrees at all times (i) to have and maintain systems, facilities, control policies, procedures and security provisions to ensure compliance with this Agreement, and to protect the System, including any and all related data and Reports delivered to Customer, and all JVRO systems and data, from being visible, searchable, harvestable, or in any way discoverable via the Internet, including via the World Wide Web and (ii) that such systems, facilities, control policies, procedures and provisions meet minimum industry standards and standards required by applicable laws with respect to personally identifiable information. NAPHSIS may use automated procedures and other means to detect violations of this Agreement, and may immediately disable and/or terminate offending users. NAPHSIS is not responsible for interruptions that may result from any such disabling or termination. Customer acknowledges that any successful attempt by any person to gain unauthorized access to or use of the System, including any and all related data and Reports, from Customer may result in immediate termination of this Agreement. All associated security costs will be borne by Customer.
  2. **Unauthorized Access.** If Customer experiences, identifies or is informed of actual or suspected unauthorized use of or access to any of its facilities or systems which may involve or relate to Reports or any other Services or any Confidential Information (an “Incident”), Customer will at its own cost and expense: (a) immediately notify the Contact Persons for NAPHSIS via telephone and e-mail; (b) immediately investigate the Incident; (c) promptly provide to NAPHSIS in writing all initial information known about the Incident, the Services and/or Confidential Information affected, and the steps taken by Customer to prevent the recurrence of such breach and to mitigate the risk to NAPHSIS and all JVROs; (d) provide NAPHSIS with prompt and thorough updates; and (e) fully cooperate with NAPHSIS’ handling of such matter, including any investigation, reporting and other obligations required by applicable law or regulation.
  3. **Audit Obligations.** During the Term and for a three year period thereafter, to ensure compliance with this Agreement (including access security and verification that Queries are being conducted solely for Approved Purposes), on at least 15 days’ prior written notice, Customer shall cooperate and participate in good faith with periodic and unscheduled audits or examinations during regular business hours of Customer’s books, records, systems, facilities, and procedures related to safeguarding, accessing and using the Services, including Reports generated by the System on behalf of Customer. For use in any audit or examination conducted by or on behalf of NAPHSIS, Customer must generate, maintain and disclose to NAPHSIS: (a) a unique number for each individual Query (which complies with NAPHSIS length requirements); and (b) a list of all employees (and all individuals working for contractors or subcontractors permitted by NAPHSIS in accordance with Section 11.2) who accessed the Services on behalf of Customer. Failure to cooperate with any NAPHSIS audit or examination may result in immediate termination of this Agreement.

## **6. Proprietary Rights; Authority.**

**6.1 Ownership.** All title, ownership, and intellectual property rights in and to the Services or any Report, and any other materials used in connection with this Agreement and any work product created as part of this Agreement (including any changes made at Customer’s suggestion) and any related documentation, including any copyrights, patents, trade secrets, computer code, programs, inventions, discoveries, know-how, methods, processes, designs, algorithms, formulae, patterns, and compilations, are owned by NAPHSIS or its licensors, and nothing in this Agreement should be construed as transferring any aspects of such rights to Customer or any third party. NAPHSIS reserves any and all rights not expressly granted herein. If Customer provides any oral or written comments or reports to NAPHSIS: (a) the content of all such “Feedback”, including information, corrections, ideas and concepts, is the property of NAPHSIS, and Customer agrees to assign any copyright and other such rights therein to NAPHSIS, without any accounting or payment to Customer; and (b) NAPHSIS may use the Feedback in any way, including by incorporating Feedback into the Service or any Report, support or one or more other products.

**6.2 Authority.** Customer represents, warrants and covenants that: (a) Customer has and will maintain the right to enter into and perform this Agreement without the further consent of any third party; (b) neither Customer’s entry into this Agreement nor Customer’s or NAPHSIS’ performance hereunder will conflict with any other contractual or other obligation which Customer may have to any other party; and (c) any information which Customer may provide to NAPHSIS is true, accurate and complete.

**7. Disclaimer.** While NAPHSIS endeavors in good faith for the System to generate accurate and reliable Reports, Customer acknowledges that: (a) Reports are based solely on data made available by JVROs, which data and offices are not within the control of NAPHSIS; (b) material discrepancies in Reports may exist (for example, it is possible for the records of persons who are not deceased to be erroneously included in a state database) and NAPHSIS cannot guarantee the accuracy of any Report or any JVRO on which a Report is based; (c) the absence of a particular person in a JVRO death database is not proof that such person is alive; (d) Reports are not intended to replace, or act as a substitute for, thorough due diligence; (e) NAPHSIS has no obligation to update or otherwise change Reports for any reason, such as the passage of time; (e) NAPHSIS does not and cannot guarantee any JVRO’s security, reliability, features, fees or other services or information at any given moment in time; (f) Customer uses the Services at its own risk; (g) NAPHSIS assumes no responsibility for errors or omissions in any Report; and (h) NAPHSIS reserves the right at any time to modify, suspend or discontinue the Service, or any part thereof, with or without notice. **to the extent permitted by applicable law, NAPHSIS makes no representations or warranties in connection with the Services or any Report, support or any other work product or services provided under or in connection with this agreement, all of which are provided on an “AS IS” basis. NAPHSIS expressly disclaims, and Customer expressly waives, all warranties, whether express or implied, including warranties of merchantability, fitness for a particular purpose, non-infringement, system integration, and accuracy of informational content. without limiting the generality of the foregoing, NAPHSIS does not warrant results or warrant that the Services or any Report, support, work product or services will be free from errors, defects or bugs, or that such will not interfere with or disrupt any security system, network, software or system.** Customer agrees not to take any adverse action against any individual, organization or entity without further, independent investigation to verify a death.

**8. Limitation of Liability; Indemnification. Notwithstanding anything else herein or otherwise, to the extent permitted by applicable law, neither NAPHSIS nor any of its affiliates or their respective directors, officers, employees, licensors, contractors, suppliers, agents or representatives, shall be liable or obligated with respect to the Services or any Report or other services under any contract, negligence, strict liability or other legal or equitable theory, even if NAPHSIS or such affiliate or other person or entity has been advised of the possibility of such damages, including for any: (a) errors or omissions in the Services, including any Report; (b) direct, indirect, incidental, special or consequential damages, including any lost revenues, lost profit, lost data or lost savings (whether resulting from impaired or lost data, an inaccurate Report, software or computer failure or any other cause); (c) cost of procurement of substitute goods, technology, services or rights; (d) interruption of use or loss or corruption of data, or business interruption, or other loss arising from the Services or any Report, support or other services; or (d) matter beyond its reasonable control.** **Customer agrees that this section 8 represents a reasonable allocation of risk and acknowledges that NAPHSIS would not proceed in the absence of such allocation.** Customer agrees to defend, indemnify and hold harmless NAPHSIS and its affiliates, and their respective officers, directors, employees and agents, from any claims, losses, liability costs and expenses (including attorneys’ fees) arising from Customer’s, or any of Customer’s employees’ (or any of Customer’s approved contractors’ or subcontractors’): (a) use of the System or other Services; or (b) breach or violation of this Agreement, state or federal laws or regulations, or any third party rights, including claims of copyright infringement, defamation, harassment, invasion of privacy or fraud.

**9. Confidentiality.** “Confidential Information" means any and all non-public technical, business or proprietary information disclosed or made available by NAPHSIS to Customer, directly or indirectly, in connection with this Agreement, including, information regarding NAPHSIS's business strategies and practices, methodologies, trade secrets, know-how, pricing, technology, software, product plans, services, relationships with any third party, client lists, and information regarding NAPHSIS's employees, clients, vendors, consultants and affiliates. Without limiting the generality of the foregoing, Reports disclosed to Customer under the Agreement are confidential to NAPHSIS. Customer will: (a) treat as confidential all Confidential Information; (b) not use such Confidential Information except as expressly set forth in this Agreement or otherwise authorized in writing; (c) implement reasonable procedures to prohibit the unauthorized use, disclosure, duplication, misuse or removal of Confidential Information; and (d) not disclose such Confidential Information to any third party, except as may be necessary and required in connection with Customer’s rights and obligations under this Agreement, and subject to confidentiality obligations at least as protective as those set forth herein. Without limiting the foregoing, Customer will use at least the same procedures and degree of care which Customer use to prevent the disclosure of Customer’s own confidential information of like importance to prevent the disclosure of Confidential Information disclosed by NAPHSIS, but in no event less than reasonable care. Except as expressly authorized in this Agreement, Customer will not copy Confidential Information without NAPHSIS’s prior written consent. If Customer breaches any of Customer’s obligations with respect to confidentiality and/or unauthorized use or disclosure of Confidential Information hereunder, NAPHSIS is entitled to equitable relief, in addition to any other legal remedies, to protect its interests, including injunctive relief. NAPHSIS may use Customer’s name and logo in NAPHSIS’ public customer listings and marketing materials, and issue press releases referencing Customer’s name.

**10. Links to Other Resources.** Solely as a courtesy to Customer, NAPHSIS may provide links to other websites and resources at certain places on the Site. NAPHSIS does not endorse, approve, certify or control any of those websites, and is not responsible for the content, availability, accuracy, completeness, efficacy, or timeliness of information contained on, those sites.

## **11. Miscellaneous.**

**11.1 Interpretation.** Headings used in this Agreement are for convenience only and shall not be considered in construing this Agreement. If any part of this Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected and such provision shall be deemed modified to the minimum extent necessary to make such provision consistent with applicable law; in its modified form, such provision shall then be enforceable and enforced. Termination is not an exclusive remedy and all other remedies will be available whether or not termination occurs.   No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise. To the extent permitted by applicable law, no action, regardless of form, arising out of this Agreement may be brought by Customer more than one year after the cause of action has accrued. NAPHSIS shall not be liable for any failure related to the unavailability of communications facilities or energy sources, acts of God, Customer’s acts, acts of governmental authority, fires, strikes, delays in transportation, riots, terrorism, war, or any other causes beyond NAPHSIS’s reasonable control.

**11.2 Assignment.** Subject to the following, all of the terms and conditions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and any permitted assigns of the parties. Customer shall not assign or delegate this Agreement or any of its rights or obligations hereunder (whether by operation of law or otherwise) without NAPHSIS’ prior written consent. Any attempt by Customer to assign this Agreement (or delegate any right hereunder) without NAPHSIS’ prior written consent shall be null and void; provided, however, that (a) Customer may assign this Agreement to a successor-in-interest in the event of a merger, consolidation or acquisition of all or substantially all of Customer’s assets, provided that Customer provides prior written notice of such assignment at least 30 days before the effective date thereof, and subject to payment of any applicable incremental fees in connection with such assignment, and (b) in addition, NAPHSIS reserves the right to terminate this Agreement by providing notice thereof within 30 days of receipt of notice of said assignment. There are no intended third party beneficiaries of this Agreement.

**11.3 Governing Law; Dispute Resolution.** This Agreement shall be governed in all respects (without regard to any conflict of laws provisions) by the laws of the United States of America and the State of Maryland as such laws are applied to agreements entered into and to be performed entirely within the State of Maryland between residents of Maryland. The parties agree to meet and confer in good faith (including by telephone) to resolve any claims or disputes, whether based on contract, tort or other legal theory (including any claim of fraud or misrepresentation), arising out of or relating to this Agreement, including the interpretation, performance, breach or termination thereof. Any such claims or disputes that remain unresolved shall be exclusively brought and resolved either in the Circuit Court for Montgomery County, Maryland, or the United States District Court for Maryland, and all applicable appellate courts. The parties expressly consent to the exclusive jurisdiction and venue of such courts. Notwithstanding the foregoing, either party may enforce any judgment rendered by such courts in any court of competent jurisdiction.

**11.4 Consent and Notices.** Unless otherwise expressly indicated, any consent or authorization required under this Agreement shall be at the sole discretion of the party from whom such consent is required. Notice shall be deemed received by a party, and shall be effective, on the day received. All breach notices permitted or required under this Agreement shall be in writing and delivered by recognized postal or courier services who provide delivery confirmation to the other party’s address on the Signature Page, or such other address as the parties may subsequently provide in writing. All other notices may be sent by email with notice deemed given upon acknowledgement of receipt by a reply email. Customer shall provide NAPHSIS with written notice of any change in the primary contact person for Customer as indicated on the Signature Page.

**11.5 U.S. Government Restricted Rights.** Solely in the event that Customer is a U.S. government agency, the Rider shall be incorporated by reference and deemed to amend this Agreement; to the extent of any conflict between the Rider and the body of this Agreement, the Rider shall take precedence and prevail.

**11.6 Export Control.** To the extentCustomer’s rights under this Agreement are subject to export or import control laws, Customer agrees to comply fully with those laws.  Customer hereby certifies that Customer is not prohibited by the U.S. government from participating in export or re-export transactions.

**11.7 Entire Agreement.** This Agreement comprises the entire agreement between the parties regarding the subject matter hereof and supersedes and merges all prior and contemporaneous proposals, understandings and all other agreements, oral and written, between the parties relating to the subject matter of this Agreement. This Agreement may be amended or modified only in a dated writing executed by duly authorized representatives of both parties. This Agreement may be executed in counterparts, both of which taken together shall constitute one single Agreement between the parties. This Agreement may be executed via facsimile, and a facsimile copy of either party's signature shall be deemed and be enforceable as an original thereof. Any of Customer’s documents, whether signed or unsigned, including purchase orders, shall not be given any effect which is inconsistent with this Agreement unless this provision is specifically referred to and waived by NAPHSIS in writing. A party’s acceptance of any such document shall not be construed as an acceptance of provisions which are in any way in conflict or inconsistent with, or in addition to, this Agreement, unless such terms are separately and specifically accepted in writing by an authorized officer of each of the parties.

**Exhibit B**

**Customer Agreement for Licensed Access to the EVVE FOD System (for U.S. Government End Users)**

**Rider to License Agreement for the NAPHSIS**

**EVVE FOD System (for U.S. Government End Users)**

**1. Scope.** This Rider to License Agreement for the NAPHSIS EVVE FOD System (“**Rider”)** and the attached License Agreement for the NAPHSIS EVVE FOD System **(the “Agreement”)** establish the terms and conditions enabling NAPHSIS to provide access to the EVVE FOD System to a U.S. Government agency **(the “Government Customer”)**. Capitalized termsnot defined in this Rider shall have the meaning provided in the Agreement.

**2. Applicability.** The terms and conditions in the attached Agreement are hereby incorporated by reference to the extent they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contract Disputes Act of 1978 (41 U.S.C. §§ 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ) and 28 U.S.C. § 1498 (Patent and copyright cases)).

**3.** **Changes to Work and Delays.** The Agreement shall be subject to FAR 52-243-1, Changes and FAR 52.212-4(f), Excusable Delays.

**4.** **Contract Formation.** The Agreement and this Rider shall be subject to FAR Sections 1.601(a) and 43.102. The Government Purchase Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties under the Agreement. All terms and conditions intended to bind the Government Customer must be included within the contract signed by the Government Customer.

**5.** **Audit.** During the term of the Agreement: (a) If the Government Customer’s security requirements included in the Purchase Order are met, NAPHSIS or its designated agent may audit the Government Customer’s facilities and records to verify the Government Customer’s compliance with the Agreement. Any such audit will take place only during the Government Customer’s normal business hours contingent upon prior written notice and adherence to any security measures the Government Customer deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. NAPHSIS will give the Government Customer written notice of any non-compliance, or (b) if the Government Customer’s security requirements are not met and upon NAPHSIS’s request, the Government Customer will run a self-assessment with tools provided by and at the request of NAPHSIS to verify the Government Customer’s compliance with the Agreement.

**6. Termination.** Clauses in the Agreement referencing termination or cancellation of the license grant are hereby deemed to be deleted. Termination shall be governed by FAR 52.212-4, Contract Terms and Conditions–Commercial, and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

**(a)** NAPHSIS may request cancellation or termination of the Agreement if such remedy is granted to it after inclusion of the Contract Disputes Act dispute resolutions process or if such remedy is otherwise ordered by a United States Federal Court.

**7. Consent to Government Law/Consent to Jurisdiction.** The Agreementis subject to the Contract Disputes Act of 1978 (41 U.S.C. §§ 7101-7109) and the Federal Tort Claims Act (28 U.S.C. § 1346(b)). The validity, interpretation and enforcement of this Rider will be governed by and construed in accordance with the laws of the United States. In the event or to the extent that a version of the Uniform Computer Information Transactions Act (“UCITA”) or any similar federal laws or regulations are enacted, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted. All clauses in the Agreement referencing equitable remedies are deemed not applicable to the Government Purchase Order and are therefore deemed to be deleted.

**8. Force Majeure.** The Agreement is subject to FAR 52.212-4(f), Excusable Delays. Unilateral termination by NAPHSIS does not apply to a Government Purchase Order and all clauses in the Agreement referencing unilateral termination rights are hereby deemed to be deleted.

**9. Assignment.** All clauses regarding assignment are subject to FAR 52.232-23, Assignment of Claims and FAR 42.12, Novation and Change of Name Agreements, and all clauses governing assignment in the Agreement are hereby deemed to be deleted.

**10. Indemnities.** All Agreement clauses referencing Subscriber indemnities are hereby deemed to be deleted.

**11. Renewals.** All Agreement clauses that violate the Anti-Deficiency Act (31 U.S.C. §§ 1341, 41 U.S.C. § 11) ban on automatic renewal are hereby deemed to be deleted.

**12. Future or Indeterminate Fees or Penalties.** All Agreement clauses that violate the Anti-Deficiency Act (31 U.S.C. § 1341, 41 U.S.C. § 11), which prohibits the Government from paying any fees or penalties beyond the contract amount, unless specifically authorized by existing Federal statutes such as the Prompt Payment Act or Equal Access to Justice Act, 31 U.S.C. § 3901, 5 U.S.C. § 504, are hereby deemed to be deleted.

**13.** **Taxes.** Any references to taxes in the Agreement are subject to FAR 52.212-4(k), which provides that the contract price includes all federal state and local taxes and duties.

**14. Third Party Terms.** Third party terms shall be subject to the actual language agreed to in the Purchase Order by the Government Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the third party components must be acquired separately under Federally-compatible agreements, if any.

**15.** **Use of the System.** Access and use of the System shall be in accordance with the Rider and Agreement, unless the Government Customer determines that it requires different terms of use and provided that NAPHSIS agrees in writing to such terms in a valid Purchase Order.

**16. Dispute Resolution and Venue.** Any disputes relating to the Agreement and this Rider shall be resolved in accordance with FAR 52.233-1, Disputes, and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. The Government Customer expressly acknowledges that NAPHSIS shall have standing under the Contract Disputes Act, 41 U.S.C. §§ 7101-7109 to bring claims on behalf of any third party manufacturers providing third party software or services under the Agreement.

**17. Limitation of Liability.** The Agreementshall be subject to the following clause, which shall take precedence over any provisions to the contrary in the Agreement:

The parties shall not be liable for any indirect, incidental, special or consequential damages, or any loss of profits, revenue, data or data use. Further, the parties shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. The clause shall not impair the U.S. Government’s right to recover for fraud or crimes arising out of or related to the Government Contract under any federal fraud statute, including the False Claims Act 31 U.S.C. §§ 3729-3733.

**18. Confidentiality.** Any provisions that require the Subscriber to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. § 552, and any order by a United States Federal Court.

**19. Warranty.** If FAR 52.212-4(o) is expressly included in a Purchase Order between the parties, notwithstanding any provisions in the Agreement to the contrary, NAPHSIS warrants that the System shall be merchantable and fit for the particular purpose described in this contract.

**20. Order of Precedence.** To the extent the terms and conditions in the Agreement are inconsistent with applicable Federal law or procurement regulations, applicable Federal law and regulations shall take precedence and the inconsistent terms of the Agreement shall be deemed deleted and unenforceable.