**Attachment 1a
GCHP’s Preferred Key Terms for Licensing or SaaS Agreement**

1. ***GENERAL LICENSE AND SERVICE PROVISIONS:***

|  |  |  |
| --- | --- | --- |
| **Term** | **Comply (Y/N)** | **Explanation of Reasons for Non-Compliance** |
| 1. **Scope of License**
 |  |  |
| * 1. Contractor shall grant to GCHP a world-wide, non-exclusive license, sublicense, or right of access to use the licensed software and documentation for its intended purposes and business activities.
 |  |  |
| * 1. The license, sublicense, or right of access rights shall be extended to GCHP contractors performing services for or on behalf of GCHP, including any contractor that GCHP selects to provide services using such software, provided that GCHP executes an agreement protecting the confidentiality of the licensed software and with license restrictions consistent with the confidentiality and license terms of the licensing agreement. Such provisions do not have to specifically name Contractor or the licensed software in order to be effective.
 |  |  |
| * 1. GCHP shall have a right to negotiate a Service Provider License during the term of the Agreement.
 |  |  |
| * 1. In the event that the licensed software is licensed on a limited basis (e.g., licensed on a per user, server, CPU, storage capacity, named user basis), there will be a mechanism to either limit GCHP usage to such limitation to prevent overage or a mechanism to notify GCHP when it has inadvertently exceeded such limit and an opportunity to either reduce usage to stay within agreed limitations or purchase additional users, capacity, etc., at the prices agreed in the license agreement. In the event of intentional or repeated excess usage, then GCHP’s sole liability shall be payment of the license fees attributable to the excess use at the rates set forth in the licensing agreement for a period of up to twelve (12) months.
 |  |  |
| 1. **Access to GCHP Systems**
 |  |  |
| * 1. GCHP shall determine the nature and extent of such access.
 |  |  |
| * 1. Contractor shall comply with GCHP instructions and policies related to such access, including use of secure gateways, VPN or other modes of secure access.
 |  |  |
| * 1. Contractor will not place any back doors in GCHP systems and will be responsible for exposing GCHP systems to malware or ransomware as a result of access by Contractor, its employees and subcontractors.
 |  |  |
| * 1. Any information accessed shall be considered GCHP Confidential Information.
 |  |  |
| * 1. GCHP may monitor Contractor’s use of and access to such systems and may access any communications on GCHP systems.
 |  |  |
| 1. **Access to GCHP Facilities**
 |  |  |
| * 1. Contractor, its employees and its agents may be granted access to GCHP facilities, subject to compliance with GCHP’s standard administrative and security requirements and policies provided to Contractor, for the purpose of performing the Services.
 |  |  |
| * 1. Access to GCHP facilities shall be restricted to normal GCHP business hours. Access to GCHP facilities outside normal business hours must be approved in advance by GCHP’s program manager, which approval will not be unreasonably withheld.
 |  |  |
| * 1. Contractor shall have no tenancy, license or any other property rights or interest in GCHP facilities.
 |  |  |
| * 1. While present at GCHP facilities, Contractor’s personnel shall be accompanied by GCHP personnel, unless otherwise specified prior to such event by GCHP’s program manager or his or her designee.
 |  |  |
| * 1. While at any GCHP facility, Contractor’s personnel, contractors, and subcontractors shall (1) comply with GCHP’s requests, rules, policies, and regulations regarding personal and professional conduct (including without limitation, the wearing of an identification badge and adhering to regulations and general safety practices or procedures) and (2) otherwise conduct themselves in a professional and businesslike manner.
 |  |  |
| * 1. Contractor will be responsible for all acts, whether negligent or intentional, of its employees and subcontractors while on site at a GCHP facility, including acts resulting in employment claims for harassment or other prohibited behavior in the workplace, personal injury or wrongful death.
 |  |  |
| 1. **Damage to GCHP Facilities**
 |  |  |
| * 1. GCHP shall repair, or cause to be repaired, at Contractor’s own cost, any and all damage to GCHP facilities, including, without limitation, GCHP’s buildings, grounds, equipment, and furniture, caused by Contractor or employees or agents of Contractor.
 |  |  |
| * 1. Contractor shall notify GCHP immediately of any and all damages. All costs incurred by GCHP, as determined by GCHP, for such repairs shall be repaid by Contractor upon demand, or without limitation of GCHP’s other rights and remedies provided by any federal, state or local laws, regulations and GCHP’s policies or under this Agreement, GCHP may deduct such costs from any amounts due to Contractor from GCHP under this Agreement.
 |  |  |
| 1. **Unauthorized Access**
 |  |  |
| * 1. Except as otherwise permitted in this Agreement, in the course of furnishing the services, Contractor shall not access, and shall not permit its personnel or entities within its control to access, GCHP’s Data, systems or networks without GCHP’s express written authorization. Such written authorization may subsequently be revoked by GCHP at any time in its sole discretion.
 |  |  |
| * 1. Further, any access shall be consistent with, and in no case exceed the scope of, any such authorization given by GCHP. All GCHP authorized connectivity or attempted connectivity to GCHP’s systems shall be only through GCHP’s security gateways and/or firewalls, and in conformity with applicable GCHP security policies.
 |  |  |

***B. DATA HOSTING REQUIREMENTS:***

|  |  |  |
| --- | --- | --- |
| **Term** | **Comply** | **Explanation of Reasons for Non-Compliance** |
| **1. Data Hosting**  |  |  |
| 1. “Hosted System” means the software, Contractor servers, systems and all other software, hardware and equipment used to host the software and/or to provide GCHP with access to the software, excluding hardware, software and telecommunications connectivity required by GCHP to access Contractor’s systems.
 |  |  |
| 1. GCHP Data and Hosted Systems shall not be commingled with the system or data of Contractor or any other customer of Contractor.
 |  |  |
| 1. Contractor shall ensure that GCHP Data and Hosted Systems are not accessible to unauthorized parties for any reason.
 |  |  |
| **2.** **Minimum Technical Requirements** |  |  |
| 1. The Hosted System will be rendered in a manner that will support the User Requirements and Data Storage Requirements established by GCHP.
 |  |  |
| 1. The Hosted System shall be scalable in a manner that allows the Services to meet any Forecasted Increase established by GCHP. “Forecasted Increase” shall mean an increase to the Concurrent User Requirements and/or Data Storage Requirements during the term of the Agreement.
 |  |  |
| 1. The Hosting System will be rendered in a facility that is consistent with high industry standards for fireproofing, power and backup generation, structural integrity, seismic resistance and resistance to other natural and man-made disruptions. In addition, the facility shall be secured against physical and electronic intrusion in a manner consistent with high industry standards.
 |  |  |
| 1. Unless otherwise specified, the facility shall be served by no less than two separate high-speed telecommunications providers and Contractor shall have the ability to switch between telecommunications providers to reduce outages. Should the facility be served by two or more telecommunications providers, telecommunications outages shall be considered as an Exceptions to availability of the Hosted System. Should the facility be served by only one telecommunications provider, telecommunications outages shall be not considered as an Exception to availability.
 |  |  |
| 1. Contractor shall ensure that any data center, data repository, and/or data management is within the continental United States of America.
 |  |  |
| 1. **Storage of Data and Information**
 |  |  |
| * 1. All GCHP Data, GCHP Confidential Information and GCHP employee information must be stored in a physically and logically secure environment that protects it from unauthorized access, modification, theft, misuse and destruction.
 |  |  |
| * 1. In addition to the general standards set forth above, Contractor will maintain an adequate level of physical security controls over its facility including, but not limited to, appropriate alarm systems, fire suppression, access controls (including off-hour controls) which may include visitor access procedures, security guard force, video surveillance, and staff egress searches. Contractor will maintain an adequate level of data security controls, including, but not limited to, logical access controls including user sign-on identification and authentication, data access controls (e.g., password protection of your applications, data files and libraries), accountability tracking, anti-virus software, secured printers, restricted download to disk capability and provision for system backup.
 |  |  |
| * 1. If a Statement of Work or Order Form includes a data storage maximum, the Statement of Work or Order Form shall specify such maximum. Contractor shall immediately notify GCHP when GCHP has reached 80% of GCHP’s then-current data storage maximum. Within five (5) days of GCHP’s request, Contractor shall make additional data storage available to GCHP at rates specified in the Statement of Work or Order Form. Unless a data storage maximum and a rate for expanded data storage is set forth in the Statement of Work or Order Form, GCHP shall have no data storage maximum with respect to the Order Form or Statement of Work.
 |  |  |
| 1. **Contractor Equipment**
 |  |  |
| 1. Contractor equipment and GCHP equipment will be specified for the Hosted System.
 |  |  |
| 1. All Contractor equipment shall be provided with the operating system(s) and system utilities normally required for such Contractor equipment. Contractor equipment shall be supplied with anti-virus and security software and devices consistent with high industry standards. Contractor shall maintain all Contractor equipment at a level meeting or exceeding factory specifications. Contractor shall promptly install all manufacturer-supplied upgrades to the Contractor equipment.
 |  |  |
| 1. **Backups**
 |  |  |
| a. Contractor shall: |  |  |
| 1. Perform weekly full back-ups of the production system;
 |  |  |
| 1. Perform daily incremental back-ups of the production system;
 |  |  |
| 1. Maintain a complete and current copy of the Software and GCHP Data on a server located at a remote location with a different Internet connection than the Hosted System;
 |  |  |
| 1. Fulfill restoral requests as directed by GCHP due to site failures. In the event that service to the Hosted System are interrupted, the remote server shall be immediately activated so that access to the Hosted System may continue uninterrupted.
 |  |  |
| 1. If the Hosted System is expected to be down for more than twenty-four (24) hours, Contractor shall immediately transfer appropriate back-up data and re-establish all hosting operations in an appropriately functioning secondary server or location.
 |  |  |
| 1. **Disaster Recovery**
 |  |  |
| 1. Contractor shall maintain and implement disaster recovery and avoidance procedures to ensure that the Services are not interrupted during any disaster (“Disaster Recovery Plan”).
 |  |  |
| 1. Contractor shall provide GCHP with a copy of its current Disaster Recovery Plan and all updates annually. Contractor shall test the Disaster Recovery Plan annually and in coordination with GCHP.
 |  |  |
| 1. At all times during the Term, Contractor shall ensure the primary site and the recovery site are separated by at least two hundred (200) miles. All requirements of this Agreement, including those relating to security, personnel due diligence, and training, shall apply to the recovery site.
 |  |  |
| 1. **Business Continuity Plan**
 |  |  |
| a. Contractor shall provide its then-current business continuity plan (“Business Continuity Plan”) to GCHP annually. |  |  |
| b. Contractor shall test its Business Continuity Plan on an annual basis until the termination of this Agreement and shall provide the test results to GCHP. |  |  |
| 1. **Modification of Technology**
 |  |  |
| 1. Contractor shall inform GCHP in advance of any material or substantial elimination, change, or modification of the Software or Services.
 |  |  |
| 1. If such changes would materially and adversely affect GCHP’s use and access to the Software and Services or would cause a failure to meet the functionality agreed upon herein, then the parties shall meet to discuss any practicable steps to mitigate such disruption.
 |  |  |
| **9.** **Change of Data Hosting Vendor** |  |  |
| Contractor shall provide ninety (90) days advance written notification prior to any changes to any subcontractor that provides hosting services. Any such changes shall not result in any additional costs to GCHP. |  |  |

***C. SECURITY PROVISIONS*:**

|  |  |  |
| --- | --- | --- |
| **Term** | **Comply** | **Explanation of Reasons for Non-Compliance** |
| 1. **Security**
 |  |  |
| * 1. For purposes of this Agreement, “GCHP Data” means all data, content, material, Confidential Information and other information provided by GCHP to Contractor or otherwise transmitted to Contractor for use in connection with the Software or Services.
 |  |  |
| * 1. Contractor will maintain and enforce information and data privacy and security procedures with respect to its access, use and storage of all GCHP Data that (a) are at least equal to industry standards taking into consideration the sensitivity of the relevant GCHP Data, and the nature and scope of the Services to be provided, (b) are in accordance with GCHP’s reasonable security requirements, (c) comply with all applicable international, foreign, federal, state and local laws, statutes, rules, orders and regulations, and (d) provide reasonably appropriate administrative, technical, and physical safeguards to protect against accidental or unlawful destruction, loss, alteration or unauthorized disclosure, access or use of GCHP Data.
 |  |  |
| * 1. Without limiting the generality of the foregoing, Contractor will take all reasonable measures to secure and defend its location and equipment against “hackers” and others who may seek, without authorization, to modify or access Contractor systems or the information found therein without the consent of GCHP. Contractor will periodically test its systems for potential areas where security could be breached.
 |  |  |
| 1. **Security Audits**
 |  |  |
| * 1. Prior to commencement of the implementation of the Software and Services and during the Term, GCHP or its third-party designee may, but is not obligated to, perform audits of Contractor’s environment, including unannounced penetration and security tests, as it relates to the receipt, maintenance, use or retention of GCHP Confidential Information or other GCHP Data. Any of GCHP’s regulators shall have the same right upon request. In lieu of an on-site audit, upon request by GCHP, Contractor agrees to complete, within forty-five (45) days of receipt, an audit questionnaire provided by GCHP regarding Contractor’s data privacy and information security program and the result of a penetration test performed by an independent third party.
 |  |  |
| * 1. Contractor agrees to comply with all reasonable recommendations that result from such inspections, tests, and audits within reasonable timeframes.
 |  |  |
| * 1. No less than annually, Contractor shall conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to GCHP. In the event that any audit (whether by GCHP, Contractor, or a third party designee of either of them) reveals a material risk to the confidentiality, integrity, or availability of GCHP’s Confidential Information or other GCHP data and Contractor fails to mitigate such risk within a reasonable period of time, which shall not exceed thirty (30) days without GCHP’s prior written authorization, GCHP may terminate this Agreement without further obligation, including payment of any termination or similar fee or penalty.
 |  |  |
| * 1. Contractor shall provide a report on security patches applied quarterly to GCHP.
 |  |  |
| * 1. GCHP reserves the right, at its sole election, to immediately terminate this Agreement or a SOW or Exhibit or Order Form without limitation and without liability if GCHP reasonably determines that Contractor fails or has failed to meet its obligations pertaining to data security, confidentiality or security audits.
 |  |  |
| 1. **Remedies for Breach of Obligations of Security and Confidentiality**
 |  |  |
| * 1. Each party acknowledges that breach of its obligation of security or confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages.
 |  |  |
| * 1. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of GCHP, at the sole election of GCHP, the immediate termination, without liability to GCHP, of this Agreement or any Exhibit or Statement of Work or Order Form corresponding to the breach or threatened breach.
 |  |  |

***D SERVICES AND SUPPORT PROVISIONS*:**

|  |  |  |
| --- | --- | --- |
| **Term** | **Comply** | **Explanation of Reasons for Non-Compliance** |
| 1. **Support Window for Core Claims Processing Software**. Software will be available Monday through Friday from 6:00am – 9:00pm Pacific Time and for-on call services only, on Saturday from 6am – 3:00pm Pacific Time.
 |  |  |
| 1. **Support Window for Medical Management Software**. Software will be available Monday through Friday from 6:00am – 9:00pm Pacific Time and for-on call services only Saturday and Sunday from 6am – 3:00pm Pacific Time
 |  |  |
| 1. **Maintenance Services**. Contractor shall provide maintenance services (“Support”) without charge to GCHP. In addition to any warranty **obligations** of Contractor hereunder, Contractor shall:
 |  |  |
| 1. Provide to GCHP, as promptly as reasonably practicable, and as may otherwise be required in each Statement of Work, Exhibit, or Order Form (including any applicable Service Level), Software modifications or workarounds that eliminate the material adverse effects of or otherwise correct any Errors. For purposes of this Agreement, “Error” means an error or defect in the Software that results in the Software not operating in conformance with the applicable specifications and documentation.
 |  |  |
| 1. Respond to Errors with the Software encountered by GCHP according to the specifications in Exhibit D, Service Level Methodology.
 |  |  |
| 1. Provide unlimited telephone support by technical support personnel for the resolution of technical questions and Software errors during the Support Window. Contractor shall also provide to GCHP, without additional charge, all reasonably necessary telephone consultation requested in connection with GCHP’s use and operation of the Software or any problems therewith.
 |  |  |
| 1. Provide online access to technical support bulletins and other user support information and forums.
 |  |  |
| 1. Conduct quarterly on-site support visits and reviews involving technical teams from both parties to discuss Software support issues.
 |  |  |
| 1. **Required Notice of Maintenance**
 |  |  |
| * 1. Contractor shall provide no less than thirty (30) day’s prior written notice to GCHP of all non-emergency maintenance to be performed on the Services, such written notice including a detailed description of all maintenance to be performed.
 |  |  |
| * 1. For emergency maintenance, Contractor shall provide as much prior notice as commercially practicable to GCHP and shall provide a detailed description of all maintenance performed no greater than one (1) day following the implementation of the emergency maintenance’s
 |  |  |
| 1. **Contractor’s Changes and Upgrade**s
 |  |  |
| * 1. Contractor may from time to time make material enhancements and changes to the Software. In the event of such enhancements or changes, (i) the new version of the Software will include at least the functionality, level or quality of services that GCHP previously received and shall continue to comply with all of the requirements of this Agreement, and (ii) GCHP shall be provided, at least sixty (60) days in advance of any such changes, written notice and a demonstration of such changes.
 |  |  |
| * 1. If such advanced demonstration reveals material adverse effects on functionality or operation of the Software, then GCHP may in its sole discretion reject such changes and remain on the current version of the Software for the remainder of the Term and continue to receive support and maintenance services as required hereunder.
 |  |  |
| * 1. During the Term, GCHP shall receive access to all new versions, releases, updates, enhancements of the Software at no additional charge within fifteen (15) days of its general release. GCHP shall have the right, at no additional cost, to test each such Update on test environments.
 |  |  |
| * 1. Where Contractor has reduced or eliminated functionality in the Software and/or Services, GCHP, at GCHP’s sole election and in GCHP’s sole determination, shall have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this Agreement or the Statement of Work and be entitled to a return of any prepaid fees.
 |  |  |
| 1. **Subsequent Versions or New Products**
 |  |  |
| * 1. If, during the Term, Contractor makes available any future update, version, or release of the Software for which an additional charge is required, Contractor shall waive such charge and provide the update, version, or release to GCHP.
 |  |  |
| * 1. During the Term, if Software functions or modules not included in the Software marketed by Contractor as of the Effective Date, and not otherwise provided to GCHP under this Agreement, are subsequently made generally available to any of Contractor’s other clients, GCHP shall have the option to obtain such functions or modules at a price equal to the lowest price charged by Contractor for such functions or modules to any then-current Contractor client or 30% off the list price for the functions or modules, whichever is lower.
 |  |  |
| * 1. If within four (4) years of the Effective Date, the Software is displaced (or another renamed product is distributed), GCHP shall receive the new product at no additional charge.
 |  |  |
| 1. **Third Party Software**
 |  |  |
| * 1. In the event Contractor provides any third-party software (the “Third Party Software”) to GCHP in connection with this Agreement, the following shall apply: (i) Contractor shall specifically identify in writing all Third-Party Software; (ii) Contractor shall attach written copies of all third-party license agreements or terms applicable to GCHP to the licensing agreement.
 |  |  |
| * 1. Contractor warrants that (a) it has the right to license any Third Party Software licensed to GCHP under this Agreement; (b) the Third Party Software does not, and the use of the Third Party Software by GCHP as contemplated by this Agreement will not, infringe any Intellectual Property rights of any third party; and (c) unless specifically provided otherwise herein, GCHP shall have no obligation to pay any third party any fees, royalties, or other payments for GCHP’s use of any Third Party Software in accordance with the terms of this Agreement. Contractor shall support and maintain all such Third-Party Software to the same extent as the Software and they shall be subject to all warranties, indemnities, and other requirements of this Agreement, including scope of license and maintenance and support, relating to the Software. To the extent permitted by law or contract, Contractor shall pass through to GCHP the warranties for the Third-Party Software.
 |  |  |
| 1. **Run-Out and Transition Services.**
 |  |  |
| GCHP requires a pre-negotiated post termination wind-down license and support fee. The expectation is that use of the software would gradually and then significantly be reduced for a mutually agreed upon period after the termination or expiration of the Agreement..  |  |  |

***E INDEMNIFICATION AND LIMITATION OF LIABILITY*:**

|  |  |  |
| --- | --- | --- |
| **Term** | **Comply****(Y/N)** | **Explanation of Reasons for Non-Compliance** |
| 1. **General Indemnification**. Contractor agrees to indemnify, defend, and hold harmless GCHP and its officers, directors, agents, and employees (each, an “Indemnitee“) from and against any and all liabilities, damages, losses, expenses, claims, demands, suits, fines, or judgments (each, a “Claim,” and collectively, the “Claims“), including reasonable attorneys’ fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating to any act, error or omission, negligence, or misconduct of Contractor, its officers, directors, agents, employees, and subcontractors, during the performance of this Agreement, including, without limitation, Claims arising out of or relating to: (a) any payment required to be paid to subcontractors, if any, of Contractor; (b) unauthorized access, use, or disclosure of GCHP Data or Confidential Information; (c) any material misrepresentation or breach of warranty of any representation or warranty set forth in this Agreement; (d) breach of any covenant or obligation set forth in this Agreement; and (e) the negligent acts or willful misconduct of Contractor, its employees or subcontractors while present at a GCHP facility; provided, however, that the foregoing indemnity shall not apply to the extent that the applicable Claim resulted from the acts or omissions of an Indemnitee.
 |  |  |
| 1. **Proprietary Rights Indemnification**. Contractor agrees to indemnify, defend, and hold harmless Indemnitees from and against any and all Claims, including reasonable attorneys’ fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating to the Software and/or Services infringing or misappropriating any United States or foreign patent, copyright, trade secret, trademark, or other proprietary right. In the event that Contractor is enjoined from using the Software and/or providing the Services and such injunction is not dissolved within thirty (30) days, or in the event that GCHP is adjudged, in any final order of a court of competent jurisdiction from which no appeal is taken, to have infringed upon or misappropriated any patent, copyright, trade secret, trademark, or other proprietary right in the access or use of the Software and/or the Services, then Contractor shall, at its expense: (a) obtain for GCHP the right to continue using such Software and Services; (b) replace or modify such Software and Services so that they do not infringe upon or misappropriate such proprietary right and is free to be used by GCHP; or, (c) in the event that Contractor is unable or determines, in its reasonable judgment, that it is commercially unreasonable to do either of the aforementioned, Contractor shall reimburse to GCHP any prepaid fees and the full cost associated with any transition assistance or services required for GCHP to transition to another product to perform the functionality provided by the Software.
 |  |  |